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M. LINDA PIERCE  
MUSCOGEE COUNTY  
SUPERIOR COURT

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR OLD TOWN RESIDENTIAL  
Columbus, Georgia  
January 30, 2015

IMPORTANT INFORMATION

The following Declaration of Covenants, Conditions, and Restrictions for Old Town Residential ("Declaration") is the paramount document for the land which is made subject to it and supersedes and overrides all other documents, agreements, promises, representations, and statements, regardless of who made them. Except as set forth in the Declaration itself, no person has authority to (1) amend the Declaration, (2) waive the provisions of the Declaration, or (3) impose additional restrictions on the use of land subject to the Declaration. No promotional materials, brochures, pamphlets, pictures, or other information regarding the land can add to or take away from the Declaration.

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Exhibit A: Old Town Land (entire development)

Exhibit B: Town Center Land

Exhibit C: Use Restrictions and Rules

Exhibit D: Assessments and Voting Rights

Exhibit E: Covenant to Share Costs with Old Town Apartments of Columbus, LLLP

Exhibit F: Landscape Agreement: Calvin S. Koonce

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
OLD TOWN

January 30, 2015

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (" Declaration ") is made by OLD TOWN RESIDENTIAL, INC., a Georgia corporation (" Declarant") as of the date set forth above.

INTRODUCTION

Declarant and its affiliates own the approximately 260 acre tract of land in Muscogee County, Georgia described in Exhibit "A" (the "Old Town Land").

Declarant desires to impose on the approximately 4 acre part of the Old Town Land described on Exhibit "B" (the "Town Center Land") mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each portion of the Town Center Land, and establish a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Town Center Land. In furtherance of that plan, this Declaration provides for the formation of Old Town Residential Owners Association, Inc., a non-profit corporation, to maintain the Area of Common Responsibility and to administer and enforce the Governing Documents. The Town Center Land shall hereby be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the title to the Town Center Land. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in any portion of the Town Center Land, their heirs, successors, successors-in-kind, and assigns. This Declaration does not and is not intended to create a condominium within the meaning of the Georgia Condominium Act, O.C.G.A. Section 44-3-70, and the Association is not subject to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220.

ARTICLE I  
DEFINITIONS

1. Definitions. The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.
  - 1.1. "Architectural Review Committee or ARC": The review committees appointed pursuant to Section 9.2 hereof with the rights and obligations conferred upon such review committee pursuant to this Declaration.
  - 1.2. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility

pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contracts, or agreements.

- 1.3. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Old Town Residential Owners Association, Inc., as filed with the Secretary of State of the State of Georgia.
- 1.4. "Association": Old Town Residential Owners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.
- 1.5. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Georgia corporate law.
- 1.6. "By-Laws": The By-Laws of Old Town Residential Owners Association, Inc., as they may be amended.
- 1.7. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint all of the members of the Board of Directors as provided in Section 3.2.
- 1.8. "Class "B" Member": See Section 3.2.
- 1.9. "Class "C" Member": See Section 3.2.
- 1.10. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including any property to be maintained by the Association pursuant to any Covenant to Share Costs.
- 1.11. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserves, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation.
- 1.12. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Town Center Land. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee.
- 1.13. "Covenant to Share Costs": Any agreement or contract between the Association and an owner(s) or operator(s) of property in the vicinity of the Town Center Land for the allocation of expenses that benefit both the Association and the owner(s) or operator(s) of such property; it may include the right for the owner or operator and their designees to use the Common Area.
- 1.14. "Declarant": Old Town Residential, Inc., a Georgia corporation, or any successor, successor-in-title, or assign who takes title to any portion of the Old Town Land for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; each such successor, successor-in-title, or assign will have all the rights, privileges, and discretions of the initial Declarant.
- 1.15. "Deed": Any deed, lease, assignment or other instrument other than a Mortgage conveying any interest in any Unit.

- 1.16. "Design Guidelines": The design, use and construction guidelines and application and review procedures applicable to the Town Center Land promulgated and administered pursuant to Article IX which may also be referred to as the "Town Center Architectural Standards".
- 1.17. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all Units, as more particularly described in Article II.
- 1.18. "General Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Section 8.1.
- 1.19. "Governing Documents": This Declaration, the By-Laws, the Articles of Incorporation, any Supplemental Declaration, the Design Guidelines and the Use Restrictions and Rules, or any of the above, as each may be amended from time to time.
- 1.20. "Improvements": Shall mean and include, but not be limited to, buildings of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other improvements, subject to approval by the ARC), outbuildings, underground installations, slope alterations, surface water drainage facilities, sediment control devices, roads, berms, driveways, alley ways, parking areas or facilities, loading docks and areas, fences, screening walls, retaining walls, enclosures, stairs, decks, windbreaks, planting or removal of trees, shrubs, grasses, ground covers, and other landscaping materials, poles, signs, antennas and satellite dishes, utilities, water lines, sewer, electrical and gas distribution facilities, heating, cooling and air circulation equipment and facilities, roofed structures, railroad trackage, hedges, exterior illumination, changes in exterior color or shape, staking, clearing, excavation, grading, exterior alteration of existing improvements, and all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on an Unit.
- 1.21. "Leasehold Owner": The lessee under any lease of a Unit with an initial term of not less than twenty (20) years, and which lessee has been assigned all of the owner's rights and obligations under this Declaration with respect to the leased premises.
- 1.22. "Member": A person subject to membership in the Association pursuant to Section 3.1.
- 1.23. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.
- 1.24. "Mortgagee": A beneficiary or holder of a Mortgage.
- 1.25. "Mortgagor": Any Person who gives a Mortgage.
- 1.26. "Occupant": The Owner or Leasehold Owner of any Unit and their respective employees, agents, tenants, independent contractors, invitees and licensees or any other person who either lawfully or unlawfully occupies or comes upon such Unit. All actions or omissions of any Occupant shall be deemed the action or omission of the Owner or Leasehold Owner of such Unit.



- 1.27. "Owner": One or more Persons (including the Declarant) who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded land sales contract and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. An Owner (including the Declarant) who has transferred or otherwise conveyed a leasehold interest in and to any Unit to a Leasehold Owner may, in its sole discretion, assign in such lease, all of such Owner's rights and obligations as an owner herein; provided, however, that any such assignment shall not relieve such Owner from its duties and obligations hereunder. From and after receipt of such assignment, Declarant and the ARC shall recognize the Leasehold Owner as the Owner of such Unit and the term "Owner" includes such Leasehold Owner.
- 1.28. "Person": A natural person, a corporation, a partnership, a trustee, a limited liability company, or any other legal entity.
- 1.29. "Private Amenity": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Town Center Land, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and may include, without limitation, any golf course(s) so located and all related and supporting facilities and improvements.
- 1.30. "Town Center Land": The real property described on Exhibit "B," together with such additional property as is subjected to this Declaration in accordance with Article VII.
- 1.31. "Public Records": The deed records of Muscogee County, Georgia.
- 1.32. "Special Assessment": Assessments levied in accordance with Section 8.5.
- 1.33. "Specific Assessment": Assessments levied in accordance with Section 8.6.
- 1.34. "Supplemental Declaration": An instrument filed in the Public Records which subjects additional property to this Declaration, designates and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.
- 1.35. "Unit": A portion of the Town Center Land, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy, subject to compliance with the Governing Documents. The term shall refer to the land, if any, which is part of the Unit as well as any Improvements thereon. In the case of a portion of the Town Center Land intended and suitable for subdivision but as to which no final lot subdivision map has been filed, such property shall be deemed to be a single Unit until such time as a final lot subdivision map is filed of record with respect to all or a portion of the property. This term shall not include Common Area or property dedicated to the public. Notwithstanding the foregoing, any portion of the Town Center Land developed as a condominium shall be treated as and deemed a single Unit (notwithstanding the fact that individual units within the condominium may be individually owned and conveyed) for all purposes under

this Declaration, including membership and voting rights and assessments, all of which such rights and obligations shall be held by and/or the responsibility of the applicable condominium owners' association, and which such association shall be treated as a single Member/Owner for all purposes hereunder. Additionally, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 7.1 Declarant shall also have the right to designate and treat other interest holders, including, without limitation, parcels of land developed with fee simple town homes, in the same manner, and with the same effect as specified in the preceding sentence with respect to the condominiums.

Each separately platted lot shall be deemed to be a separate Unit, regardless of the number of uses or businesses operated on such lot, unless otherwise specified by Supplemental Declaration.

In the case of a parcel of vacant land on which Improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

- 1.36. "Use Restrictions and Rules": Those use restrictions and rules affecting the Town Center Land, which may be adopted, modified and repealed as set forth in Article X. The initial Use Restrictions and Rules are set forth on Exhibit "C."
- 1.37. "Utilities": Any utilities serving any portion of the Town Center Land or an Common Areas, including, without limitation, water, public or private sewage and sewer service, storm drains, steam, gas, electricity, telephone, cable TV, solar or passive energy sources or any other utilities of any nature whatsoever.
- 1.38. "Zoning Ordinance": The City of Columbus, Georgia Zoning Ordinance, as the same may be amended from time to time.

## ARTICLE II PROPERTY RIGHTS

### 2. Property Rights

- 2.1. Common Area: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area which shall be appurtenant to shall pass with the title to each Unit, subject to:
  - 2.1.1. this Declaration and all other Governing Documents;
  - 2.1.2. any restrictions or limitations contained in any deed conveying such property to the Association;
  - 2.1.3. the right of the Board to adopt, amend, and repeal rules regulating the use and enjoyment of the Common Area;

- 2.1.4. the right of the Board to allow persons other than Owners, Leasehold Owners, Occupants and their respective employees, lessees, invitees, clients, customers and guests to use the Common Area upon such conditions as may be established by the Board;
- 2.1.5. the right of the Board to suspend the right of an Owner or Leasehold Owner to use facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;
- 2.1.6. the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area as set forth in this Declaration;
- 2.1.7. the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- 2.1.8. The rights of certain Owners to the exclusive use, access and enjoyment in and to those portions of the Common Area designated "Exclusive Common Area", as more particularly described in Section 2.4; and
- 2.1.9. The right of Class C Members and their respective employees, lessees, invitees, clients, customers and guests to use the Common Area upon such conditions as may be set forth in a Covenant to Share Costs.

Any Owner may extend its right of use and enjoyment to such Owner's employees, lessees, invitees, clients, customers and guests, as applicable, subject to reasonable regulation by the Board and further subject to all such parties' obligation to abide and be bound by the Governing Documents and any such rules and regulations promulgated thereunder.

- 2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of real property which may or may not be subject to this Declaration.
- 2.3. Condemnation. If any part of the Common Area shall be taken by an authority having the power of condemnation or eminent domain, or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to written notice prior to disbursement of the condemnation award or proceeds or conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

2.4. Exclusive Common Area.

- 2.4.1. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and Occupants of specified Units. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, parking areas, lakes and other portions of the Common Area. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Units to which the Exclusive Common Area is assigned as a Specific Assessment.
- 2.4.2. Initially, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Declarant conveys the Common Area to the Association or on the subdivision plat relating to such Common Area, or in a Supplemental Declaration; provided, however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 7.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of particular Units and Exclusive Common Area may be reassigned upon approval of the Board and the vote of a majority of the Class "A" votes to which the Exclusive Common Area is to be assigned or reassigned. As long as the Declarant owns any Old Town Land, or has the right to annex property pursuant to Section 7.1, any such assignment or reassignment shall also require the Declarant's prior written consent.
- 2.4.3. The Association may upon approval of a majority of the Owners to which the Exclusive Common Area is assigned, permit other Owners of Units to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the specific assessments attributable to such Exclusive Common Area.
- 2.5. Private Amenities. Access to and use of any Private Amenity is strictly subject to the rules and procedures of the owner of such Private Amenity, and no Person gains any right to enter or to use any Private Amenity by virtue of membership in the Association or ownership or occupancy of a Unit.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3. Membership And Voting Rights

- 3.1. Membership: Every Owner and Person entering into a Covenant to Share Costs shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, and the

restrictions on voting set forth in Section 3.2 and in the By-Laws; all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. There shall be only one membership per Covenant to Share Costs. The membership rights of an Owner and Person entering into a Covenant to Share Costs which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner or Person entering into a Covenant to Share Costs in a written instrument provided to the Secretary of the Association.

3.2. Voting. The Association shall have three classes of membership, Class "A", Class "B", and Class "C".

(a) Class "A". Class "A" Members shall be all Owners (including the Class "B" Member, if it owns a Unit). Class "A" Members shall have a weighted vote for each Unit in which they hold the interest required for membership under Section 3.1; provided, there shall be only one weighted vote per Unit; provided further, Class "A" Members shall not be entitled to vote for the election of a director during the "Class "B" Control Period" (defined below) within the meaning of OCGA Section 14-3-140(22). The vote for each Unit shall be weighted in accordance with the formula set forth in Exhibit "D." In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant (including any successor, successor-in-title, or assign as provided in the definition of Declarant above). The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member has the exclusive right to appoint all members of the Board of Directors during the "Class "B" Control Period" (herein so called) which begins on the date of this Declaration and continues until the first to occur of the following:

- (i) December 31, 2044; or
- (ii) when, in its discretion, the Class "B" Member so determines and declares in a recorded instrument.

After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

The Class "B" membership shall terminate upon the earlier of:

- (i) two years after expiration of the Class "B" Control Period;  
or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Class "C". Class "C" Members shall be all Persons entering into a Covenant to Share Costs. Class "C" Members shall have a weighted vote in accordance with the formula set forth in Exhibit "D"; provided, there shall be only one weighted vote per Covenant to Share Costs ; provided further, Class "C" Members shall not be entitled to vote for the election of a director during the "Class "B" Control Period" (defined below) within the meaning of OCGA Section 14-3-140(22). In any situation where there is more than one Person constituting a Class "C" Member, the vote for such Class "C" Member shall be exercised as the Persons determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Class "C" Member's vote shall be suspended if more than one Person seeks to exercise it.

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

#### ARTICLE IV

#### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

#### 4. Rights and Obligations of the Association.

- 4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, to the extent funds are available from Assessments and payments by Class C Members, shall manage and control the Common Area and all improvements thereon (including, with limitation, landscaping, furnishings, equipment, and other personal property of the Association), and shall keep it in attractive condition and good repair, consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out

the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

- 4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved and unimproved real estate or interests in real estate located within the Old Town Land, personal property, and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Town Center Land originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property taxes.
- 4.3. Special Events. The Association may organize, manage, and pay the cost of from General Assessments special events, seasonal decorations, and other activities that it determines are beneficial to the Members.
- 4.4 Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents, after compliance with the notice and hearing procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation:
- (a) imposing monetary fines which shall constitute a lien upon the Unit of the violator (in the event that any employee, lessee, occupant, invitee, client, customer or guest of a Unit violates the Governing Documents, and a fine is imposed, the fine shall first be assessed against the Occupant; provided however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);
  - (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
  - (c) suspending an Owner's right to vote;
  - (d) suspending any Person's right to use any facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit;
  - (e) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 Days delinquent in paying any assessment or other charge owed to the Association; and
  - (f) levying Specific Assessments to cover costs incurred in bringing a Unit into compliance in accordance with Section 8.5.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to the filing liens in the Public Records for nonpayment of any assessment or fees, the towing of vehicles that are in violation of parking rules or the correction of any maintenance, construction or other violation of the Governing Documents) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover, to the maximum extent permissible, all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

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

The Association may, but is not required to, by contract or other agreement, enforce county, city, state and federal ordinances, rules regulations and laws, if applicable, and permit local and other governments to enforce ordinances on the Town Center Land for the benefit of the Association and its Members.

- 4.5 Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.
- 4.6 Governmental Interests. For so long as the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1, the Declarant may designate sites within the Town Center Land for public or quasi-public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such



use, including conveyance of the site to the City of Columbus, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents. No membership approval shall be required for such designation.

- 4.7 Dedication of Common Area. The Association, or the Declarant for so long as the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1, may dedicate portions of the Common Area to the City of Columbus, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity without obtaining any membership approval.
- 4.8 Indemnification. The Association shall indemnify every officer, director, and committee member, against all damages and expenses, including attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles and Georgia law.

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

The Association shall also indemnify and forever hold harmless the Declarant to the extent that any officer, director or employee of the Declarant serves as an officer, director or committee member of the Association and the Declarant incurs any damages or expenses, including attorney's fees, in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding) by reason of having its officers, directors or employees serve as officers, directors, or committee members of the Association, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles, and Georgia law. This right to indemnification shall not be exclusive of any other rights to which the Declarant may be entitled.

The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

- 4.9 Rezoning. No Owner or any other Person may apply or join in an application to amend, vary or modify the Zoning Ordinance or rezone or apply for any zoning variance or waiver as to all or any portion of the Town Center Land without the prior written consent of Declarant where such amendment, variance or modification will materially affect the development or uses of a Unit within the Town Center Land. Declarant may apply such for rezoning as to any portion of the Town Center Land owned by it at any time.
- 4.10 Security. The Association and the Declarant may, but shall not be obligated to, maintain or support certain activities within the Town Center Land designated to make the Town Center Land safer than it otherwise might be. Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Town Center Land, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designated or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all Occupants of its Unit that the Association, its Board of Directors and committees, and Declarant are not insurers and that each Person using the Town Center Land assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties. Any costs incurred by the Association to provide such services shall be paid by the Association and shall be charged to all Units, as a General Assessment or a Specific Assessment, or only to those certain Units benefitted thereby, as a Specific Assessment as determined by the Board in its sole discretion.
- 4.11 Provision of Services. The Association may provide services for the Members of the Association or their employees, lessees, invitees, clients, customers and guests. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services. The costs of services provided by the Association shall be charged to the benefitted Unit(s) as a Specific Assessment. By way of example only, some services which may be provided include landscape maintenance, pest control service, special and promotional events coordination, and security. The Association shall be permitted to add, modify or cancel any services being

provided by the Association. Nothing contained herein may be relied upon as a representation as to the services, if any, that will be provided by the Association.

- 4.12 Future Development. Each Owner acknowledges, understands and covenants to inform its lessees and all Occupants of its Unit that the Town Center Land and areas adjacent to the Town Center Land are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction, and Owner waives all claims with respect thereto. Owner agrees that if Owner or Owner's employees, lessees, invitees, clients, customers, guests, contractors or agents enter onto any area of construction, they do so at their own risk, and neither the Declarant, the Association, nor their respective contractors, agents or employees shall be liable for any damage, loss or injury to such persons.
- 4.13 Municipal Services. The Association may, but is not obligated to, contribute funds to the City of Columbus or other applicable governmental authorities, for the purpose of increasing the city's capacity to provide municipal services, including, without limitation, enhanced infrastructure improvements (i.e., curbing, alternative paving surfaces, street improvements, traffic control devices, street and directional signage, etc.), and police and fire protection services, within the Town Center Land.
- 4.14 Covenant(s) to Share Costs. So long as the Class "B" membership exists, the Declarant may, but shall not be obligated to, execute and record various declarations, covenants, and deed restrictions which may constitute covenants running with the title to certain parcels of land outside the Town Center Land, assigning to the owners and occupants of such parcels and their members, guests, employees, agents and invitees, as applicable, certain rights to use all or portions of the Common Areas and obligating the owners of such parcels to pay to the Association amounts provided for therein. The owner of such a parcel entering into a Covenant to Share Costs is herein referred to as a "Class "C" Member"; Declarant, an entity in which Declarant has an interest, and an entity in which the owner(s) of Declarant have interests may become a Class "C" Member. Such Covenants to Share Costs may expand the Area of Common Responsibility and provide remedies to the owners of such parcels for the Association's failure to perform. Upon request of the Declarant, the Association shall join in such Covenants to Share Costs. The Association shall comply with the terms of any and all such Covenants to Share Costs. The Association, and Old Town Apartments of Columbus, LLLP intend to enter into a Covenant to Share Costs in substantially the form attached hereto as Exhibit "E".
- 4.15 Agreements Regarding Landscaping. The Association intends to enter into a "Landscape Agreement" with Calvin S. Koonce to provide landscaping maintenance services, in substantially the form attached as Exhibit "F".

ARTICLE V  
MAINTENANCE

5. Maintenance.

5.1 Association's Responsibility.

- (a) The Association, to the extent funds are available from Assessments and payments by Class C Members, shall maintain and keep in good repair the Area of Common Responsibility, which may include, but need not be limited to:
- (i) all landscaping and other flora, parks, lakes, structures, and improvements, including any private streets, bike and pedestrian pathways/trails, situated upon the Common Area;
  - (ii) landscaping and other flora, parks, pedestrian pathways/trails, structures and improvements within public rights-of-way within or abutting the Town Center Land or upon such other public land in the vicinity of the Town Center Land as deemed necessary in the discretion of the Board;
  - (iii) such portions of any additional property included within the Area of Common Responsibility as may be provided by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Association;
  - (iv) all ponds, streams and/or wetlands located within the Town Center Land which serve as part of the drainage and storm water retention system for the Town Center Land, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith.
  - (v) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.
  - (vi) all storm water management facilities and retention basins serving the Town Center Land (if not maintained by a governmental agency or located on or within a Unit);
  - (vii) all planter strips and landscaping within any rights-of-way or medians of the roadways within or adjacent to the Town Center Land, including Veterans Parkway, Masseur Lane, Dreamboat Drive, and Frank Houser Avenue, and any other rights-of-way and medians to the extent that the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.
  - (viii) all entry signs and features serving the Town Center Land, constructed by or on behalf of the Declarant; and
  - (ix) all signage within or adjacent to public rights-of-way within or adjacent to or in the vicinity of the Town Center Land which the Board, in its sole discretion, deems appropriate.

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

(b) There are hereby reserved to the Association easements over the Town Center Land as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Member representing 67% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any Old Town Land, or has the right to annex property pursuant to Section 7.1.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Specific Assessment against the particular Units to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

5.2 Owner's Responsibility. Each Owner shall maintain its Unit and all Improvements located thereon and all structures, parking areas, irrigation systems, drainage facilities, detention and retention ponds, grass, trees, shrubbery, landscaping, setback areas, and other improvements located in rights-of-way adjacent to the Owner's Unit in a manner consistent with the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a governmental agency pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Unit, including, but not limited to, the Design Guidelines and the Zoning Ordinance. Such maintenance includes, but is not limited to the following, unless otherwise provided in the Design Guidelines:

- (a) Removal of all litter, trash, refuse and waste at least once a week and keeping the trash pick-up and service loading areas in a neat condition;
  - (b) Lawn mowing on a regular basis such that the grass level on undeveloped land is not higher than 12" and the grass level on developed land is not higher than 4".
  - (c) Tree and shrub pruning;
  - (d) Keeping exterior lighting, signage, fixtures, and mechanical facilities in working order;
  - (e) Keeping plant materials, including without limitation grass, shrubs, ground cover, and trees alive, and adjoining rights-of-way or drainage ditches attractive and free of trash and debris;
  - (f) Promptly removing and replacing any dead plant material, including without limitation grass, shrubs, ground cover, and trees;
  - (g) Keeping parking areas, driveways, alley ways and roads in good repair;
  - (h) Striping of parking areas and repainting of Improvements, as applicable;
- and
- (i) Repair of exterior damage to Improvements and keeping exterior Improvements in good repair.

The identity of third parties engaged by an Owner to provide landscaping maintenance, such as lawn mowing, tree and shrub pruning, raking and blowing is subject to approval by the Association. The Association may approve certain providers in advance, but such advance approval is subject to withdrawal or amendment at any time.

Every Owner shall also be responsible for the security and safety of its Unit notwithstanding any security systems or measures which may be provided by the Association.

In addition to any other enforcement rights, if an Owner fails to properly perform its maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard, the Zoning Ordinance and all applicable covenants. The Association and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own.

5.4 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or

separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

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

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

## ARTICLE VI INSURANCE AND CASUALTY LOSSES

### 6. Insurance and Casualty Losses

#### 6.1 Association Insurance.

(a) Coverage. The Association, acting through its Board or its duly authorized agent, to the extent funds are available from Assessments and payments by Class C Members, shall obtain and continue in effect, if reasonably available and to the extent the Board deems reasonably necessary, blanket property insurance on any portions of the Areas of Common Responsibility for which the Association has maintenance, repair and/or replacement responsibilities; commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members; directors and officers liability coverage; fidelity insurance covering Persons handling Association funds; and such additional insurance as the Board, in its best business judgment, determines advisable or its required by law. The Board shall annually review the types and amounts of insurance coverage and shall establish the requirements for such coverage. Association insurance premiums shall be a Common Expense. The face amount of the policy shall be sufficient to cover the full replacement cost of all insured structures.

In the event of an insured loss, the deductible, in such amount as established by the Board, shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful

misconduct of one or more Owners, their employees, lessees, invitees, clients, customers or guests, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.7.

(b) Policy Requirements. Association insurance shall not be brought into contribution with insurance purchased by Owners, Occupants, Leasehold Owners or their Mortgagees individually. The Association's policies shall contain an agreed amount endorsement.

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

- (i) a waiver of subrogation as to any claims against the Board, its agents, officers, employees, Members, and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (v) an endorsement requiring at least 30 Days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal; and
- (vi) a cross liability provision.

(c) Damage and Destruction. In the event of a loss covered by Association insurance only the Board or its duly authorized agent shall be authorized to file an insurance claim, which the Board may or may not file in its sole discretion. Any damage to or destruction of the Common Area shall be repaired or reconstructed unless (i) the Members representing at least 67% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 Days after the loss, or such additional time deemed necessary by the Board, not to repair or reconstruct; and (ii) the failure to repair or reconstruct any damage to or destruction of the Common Area would not violate or breach the terms of the Zoning Ordinance, or any other agreement entered into by the Declarant or the Association with respect to the Town Center Land or any applicable laws.

If the damage or destruction to the Common Area is not repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared and shall be maintained by the Association consistent with the Community-Wide Standard. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a



capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall.

6.2 Owner's Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry liability with limits of not less than \$1,000,000.00 and property insurance for the full replacement cost of all insurable improvements on its Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on its Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

## ARTICLE VII ANNEXATION AND WITHDRAWAL OF PROPERTY

### 7. Annexation of Property

7.1. Annexation Without Approval of Membership: Until all the Old Town Land has been subjected to this Declaration or 30 years after the recording of this Declaration in the in the Public Records, whichever is earlier, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Old Town Land or any land abutting the Old Town Land. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the Old Town Land and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such supplemental Declaration shall not require the consent of any Members or Owners, but will not be valid unless executed by Declarant and the owner of such property if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Any Supplemental Declaration may contain additional covenants, conditions and restrictions, including restrictions as to use, or modify those contained in this Declaration as appropriate to reflect the different character or use of any such annexed property.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Old Town Land in any manner whatsoever.

7.2 Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes and Class "C" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the Town Center Land from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal. Removal or withdrawal of all or any portion of the Town Center Land shall be accomplished by recording in the Public Records a Supplemental Declaration executed by Declarant and the owner of such property if other than Declarant. Any such removal or withdrawal shall be effective upon the recording of the Supplemental Declaration unless otherwise provided therein.

7.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Town Center Land to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall be executed by Declarant and the owner of such property if other than Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1.

ARTICLE VIII  
ASSESSMENTS

8. Assessments

8.1 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Units, including reserves; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Town Center Land, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at a rate to be set by the Board, (subject to the maximum interest rate limitations of Georgia law), late charges in such amount as the Board may establish by resolution, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, neither a first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage nor the purchaser of the Unit at foreclosure of the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

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

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payments. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment for a year shall be due and payable in equal monthly installments on the first day of each month in the year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt itself from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of its Unit, or any other means. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes. The Association is specifically authorized to fully or partially exempt certain Units from liability for and payment of assessments based on the nature of the Owner of and/or use of such Units of portions thereof as the Board may from time to time determine in its discretion.

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

**8.2 Computation of General Assessment.** At least 60 days before the beginning of each calendar year beginning with calendar year 2016, the Board shall prepare a budget for the estimated Common Expenses of the Association during the coming year, including capital contributions in accordance with reserve fund budgets prepared under Section 8.3.

The General Assessment against each Unit shall be calculated in accordance with Exhibit "D," in aggregate amounts reasonably expected to produce receipts equaling the total budgeted Common Expenses, including any reserves, but in all cases subject to the limits below. In determining assessments, the Board may consider other sources of funds, including any surplus from prior years and any assessments expected to be generated from additional Units anticipated to become subject to assessment in the year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may, but shall not be obligated to, pay to the Association a subsidy which may be treated as either a contribution or as a loan to the Association subject to repayment, in the Declarant's discretion. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant. The payment shall be applied to operating expenses, and not capital reserves, unless the Declarant directs otherwise in writing.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least 30 days prior to the beginning of the year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners representing at

least 67% of the total Class "A" votes in the Association and by the Class "B" member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least 30 days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

Limitations on General Assessments.

(a) The maximum General Assessment per Assessment and Voting Point for calendar year 2015 shall be the amount of Fifteen and Fourteen One Hundredths Cents (\$0.1514) . See Exhibit "D" for details. For example, if the actual General Assessment for 2015 was Fifteen and Fourteen One Hundredths Cents (\$0.1514), then a residential Unit consisting of a 7,200 square foot lot and a 2,800 square foot residence would be assessed a General Assessment calculated as follows:

7,200SF lot at 1 Land Point per SF	7,200
2,800SF residence at 1 Land Point per SF	<u>2,800</u>
Total Land and Building Points	10,000
Benefit Factor	<u>X 1.0</u>
Assessment and Voting Points	10,000
General Assessment per Point per year	X \$0.1514
Total General Assessment per year	\$1,514.00
Total General Assessment per month	\$126.17

(b) Commencing with 2016 and continuing thereafter, the General Assessment per Assessment and Voting Point may be increased up to ten percent (10%) above the maximum General Assessment per Assessment and Voting Point for the previous year without a vote of the Membership.

(c) Commencing with 2016 and continuing thereafter, the General Assessment per Assessment and Voting Point may be increased more than ten percent (10%) above the maximum General Assessment per Assessment and Voting Point for the previous year only at a meeting by Owners representing at least 67% of the total Class "A" votes in the Association and by the Class "B" member, if such exists.

**8.3 Reserve Budget and Capital Contribution.** The Board shall annually prepare reserve budgets which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board, in all cases subject to the limits in Section 8.2, shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget with respect both to amount and timing, by General Assessments over the budget period. The capital contribution portion of each General Assessment shall be accounted for as a separate item and maintained in a separate account; capital contributions shall be used only for repair, replacement, and purchase of capital assets and shall not be used for operating expenses.

**8.4 Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses.

Special Assessments shall become effective unless disapproved at a meeting by Owners representing at least a majority of the total Class "A" votes allocated to the applicable Units which will be subject to the Special Assessment, and the written consent of the Class "B" Member, if any. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Owners as provided for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**8.5 Specific Assessments.** The Board may specifically assess against particular Units expenses incurred by the Association to provide special benefits, items or services (a) such as Exclusive Common Area; (b) rendered on request of the Owner of a Unit; (c) made necessary by the conduct of the Owner or its licensees, invitees, or guests; or (d) necessary to bring the Unit into compliance with this Declaration, the Articles, the By-Laws, any applicable Supplemental Declaration and the Use Restriction and Rules. Specific Assessments for items (c) and (d) may be levied by the Board only after notice to the Owner and an opportunity for a hearing.

**8.6 Lien for Assessments.** The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Georgia law), and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or

charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value). Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessments shall be levied on it; (c) each other Unit shall be charged, in addition to its usual assessments, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.9, including such acquirer, its successors and assigns.

**8.7 Date of Commencement of Assessments.** The obligation to pay assessments shall commence as to each Unit on the first of the following to occur *after* a Unit is first conveyed to a Person who is not the Declarant: (i) the 180<sup>th</sup> day after such conveyance, or (ii) the first day a substantially complete residence is located on the Unit. The first monthly installment of the General Assessment levied on each Unit shall be adjusted according to the number of days remaining in the month at the time assessments commence on the Unit, and shall be payable on the date of conveyance to such Person.

**8.8 Failure to Assess.** Failure of the Board to fix assessments or rates or to deliver or mail each Owner as assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments at the same rate as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

**8.9 Exempt Property.** The following property shall be exempt from payment of General Assessments and Special Assessments:

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

(b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public entity, unless otherwise specified by Declarant in a Supplemental Declaration.

8.10 Capitalization of Association. The Association may, but shall not be obligated to, levy against each Unit, upon acquisition of record title by the first Owner thereof other than the Declarant, a one-time contribution to the working capital of the Association in an amount equal to 25% of the annual General Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Unit for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

8.11 Variation of Level of Assessments. Notwithstanding anything to the contrary contained in this Article VIII or elsewhere in this Declaration, in setting the levels or amounts of the various assessments provided for herein, and the formula for determining same as provided in Exhibit "D", the Board may, but shall not be obligated to, consider the size of the Unit, the level of maintenance provided by the Association and the particular usage of any Unit, such as commercial, retail, service, institutional or residential (such designations being used as examples only). Such factors shall be considered a reasonable basis upon which to discriminate between assessments levied on various Units.

8.12 Payment of Assessments by Leasehold Owners and Improved Town Center Land of Declarant. Notwithstanding anything provided in this Declaration to the contrary, the Declarant (as a Member of the Association or as the Owner of any Unit) shall not be responsible for the payment of any assessments with respect to any Units owned by Declarant unless the same have been leased to a Leasehold Owner or improved by the erection of Improvements thereon in which event Declarant or the Leasehold Owner of such Unit shall pay assessments in the manner set forth in this Article VIII.

8.13 Transfer Fee. Excluding the sale of a Unit intended exclusively for single family residential use from the Declarant to a builder for the construction of a single family residence, a transfer fee shall be assessed by the Association and collected from the purchaser of each Unit upon each sale of the Unit equal to one-half percent (0.50%) of the total purchase price of such Unit, which transfer fee shall be paid to the Association and used by the Association in its sole discretion for its regular operations and/or reserves, which in either case will benefit the Town Center Land and Owners and promote and uphold the Community Wide-Standard. By way of



example only, if a Unit is sold by an Owner to a Purchaser for a purchase price of \$100,000.00, the transfer fee would be \$500.00 ( $\$100,000.00 \times 0.0050 = \$500.00$ ). In the event of non-payment of such transfer fee, the amount due shall bear interest and shall be collectible as an assessment as set forth in this Article VIII, and the Association shall have a lien against the Unit to secure payment of the transfer fee, as well as interest and costs of collection (including attorney's fees). The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deed, or other such evidence.

## ARTICLE IX ARCHITECTURAL STANDARDS

### 9. Architectural Standards

9.1 General. No improvements shall be placed, erected, installed, or constructed upon any Unit or thereafter modified, added to, or altered except in compliance with this Article, and approval of the ARC under Section 9.3.

All Improvements constructed on any portion of the Town Center Land shall be designed by and built in accordance with the plans and specifications of a person licensed in the State of Georgia to practice architecture, engineering, or landscape architecture, or other work consistent with the intended construction in accordance with applicable laws, rules and regulations, unless otherwise acceptable to the ARC, in its sole discretion. All plans and specifications shall be subject to review as provided herein.

The contractor who constructs the Improvements is subject to approval by the ARC as part of the approval process. The ARC may approve certain contractors in advance, but such advance approval is subject to withdrawal or amendment at any time.

This Article shall not apply to the construction of Improvements by or other activities of the Declarant, or to improvements to the Common Area by or on behalf of the Association. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1.

9.2 Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for use, construction and modifications under this Article shall be handled by the ARC. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARC. The ARC may establish and charge reasonable fees for review of applications hereunder

and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals.

(a) Architectural Review Committee. The ARC shall consist of five persons and shall have exclusive jurisdiction over all construction on any portion of the Town Center Land. So long as the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1, the Declarant retains the right to appoint all members of the ARC who shall serve at the Declarant's pleasure and may be removed by the Declarant at any time; however, the Declarant shall make such appointments so that at all times

- (i) one member is an architect registered in the State of Georgia selected by Declarant, and the architect shall not be disqualified because he/she is also providing or has provided services to Declarant or its affiliates,
- (2) one member is a landscape architect registered in the State of Georgia selected by Declarant, and the landscape architect shall not be disqualified because he/she is also providing or has provided services to Declarant or its affiliates,
- (3) two members are any persons selected by Declarant, who may be owners of Declarant or otherwise affiliated with Declarant, and
- (4) one member is the person who is an Owner designated by the Association to Declarant who is an Owner.

There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board shall appoint the members of the ARC, who shall thereafter serve and may be removed in the Board's discretion.

(b) Modifications Committee. The Board of Directors may, but shall not be obligated to establish a Modification Committee ("MC") to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. If established, the MC shall have jurisdiction over modifications, additions, or alterations made on or to existing Improvements on Units. The ARC shall have the right to veto any action taken by the MC which the ARC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the ARC. Upon expiration of the Declarant's right to appoint the members of the ARC, the MC may be eliminated and its duties assumed by the ARC. The term "Committee" as used herein means the ARC or MC, as applicable.

### 9.3 Guidelines and Procedures

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Town Center Land. The Design Guidelines may contain general provisions applicable to all of the Town Center Land, as well as specific provisions which vary according to land use and from one portion of the Town Center Land to another

depending upon the location, unique characteristics, and intended uses. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Committee in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Committee and compliance with the Design Guidelines does not guarantee approval of any application.

The ARC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitations on the scope of amendments to the Design Guidelines; the ARC is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. As an example and not in limitation of the scope of the authority to amend the Design Guidelines, the inclusion in the Design Guidelines of acceptable building plans does not imply that those plans will remain acceptable under the Design Guidelines in the future; the Design Guidelines may be amended to delete previously acceptable building plans and to add acceptable building plans that are not the same as or even similar to previously acceptable building plans.

The ARC shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Town Center Land.

The MC may promulgate detailed procedures and standards governing its areas of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the ARC. Any architectural guidelines and standards adopted by the MC may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

(b) Procedures. No activities within the scope of Section 9.1 shall commence on any portion of the Town Center Land until an application for approval of the proposed work (which includes the identity of the contractor who will perform the work) has been submitted to and approved by the Committee, and the specific use for such portion of the Town Center Land has been approved by Declarant in accordance with Article X. The Committee may require the submission of application forms and information as it deems necessary to consider any application and may require multiple stages of application and review for any use, construction or modification.

In the event that the Committee fails to approve or to disapprove in writing any stage of application within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved unless an extension of such time period is agreed to by the Committee and the applicant. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall

be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARC pursuant to Section 9.5.

(c) Basis of Approval. In reviewing each submission, the Committee may consider (but shall not be limited to consideration of) the quality of workmanship and design, harmony of external design with existing structures, and located in relation to surrounding structures, topography, setbacks and finish grade elevation, among other things. Decisions of the Committee may be based solely on aesthetic considerations and shall be made by a Majority vote of all Committee members. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as Committee members change over time.

Review of the plans shall be based on general adequacy of site dimensions, conformity and harmony of the exterior design, location with neighboring structures and sites, relation of finished grades and elevations to neighboring sizes, compatibility with first class commercial, retail, residential, and mixed use developments, and conformity to both the specific and general restrictions and covenants set forth herein, and in the Design Guidelines. ARC shall have the right to disapprove any submitted plans of any Unit if such plans are not in conformity with the provisions of this Declaration or the Design Guidelines, or if the ARC, acting pursuant to this Article 9 in its discretion (which shall be exercised in a reasonable manner) determines that such plans are not in the best interest of the contemplated development of the Town Center Land as a master planned mixed use development as described by this Declaration.

All work shall be commenced and completed within such period as provided in the Design Guidelines or as the Committee may specify in the notice of approval, unless commencement of completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the ARC. In the event construction of the work called for by the approved plans has not substantially commenced within such period then approval shall be deemed expired and no construction shall thereafter commence unless renewal is granted by the ARC.

(d) Easement and Common Area Dedications. As a prerequisite of approval of plans, the ARC shall have the power to require an Owner who has submitted plans to grant any reasonable utility and drainage easements as may be required for the enjoyment and benefit of the Owners or the Association. Where possible, the ARC shall attempt to locate any such required easements along the perimeter of the Unit, within existing or proposed rights-of-way, within other existing or proposed easements, or in such a manner as to not materially impair the proposed use of the Unit.

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

approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

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

9.6 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Town Center Land only and shall not create any duty to any Person. Neither the Declarant, the Association, the Board, nor the ARC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for actions of the contractor. Neither the Declarant, the Association, the Board, nor the ARC, nor any 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 Unit. In all matters, the Declarant, the ARC and its members shall be defended and indemnified by the Association as provided in Section 4.7.

9.7 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by the ARC all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approval work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to

assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Town Center Land. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this paragraph.

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

## ARTICLE X USE RESTRICTIONS AND RULES

### 10. Use Restrictions and Rules

10.1 Plan of Development Applicability: Effect. Declarant has established a general plan of development for the Town Center Land as a master planned mixed use development in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Town Center Land, and the vitality of and sense of community within the Town Center Land, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires and to regulate and control the Area of Common Responsibility. The Town Center Land is subject to the Design Guidelines, the land development, architectural and design provisions described in Article IX, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Town Center Land, any applicable Supplemental Declaration, and the Use Restrictions and Rules promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the Town Center Land, and which are enforceable by the Association as set forth in this Declaration.

The Town Center Land shall be used only for a purpose specifically approved by the Declarant or its designee, consistent with this Declaration and any Supplemental Declaration. As set forth in Article XIII, Declarant retains the right, in its discretion, as long as it owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1, to specifically determine, limit and otherwise review and designate the used permitted for any Unit or group of Units. Such specific permitted use designations may be amended only as provided in Article XIII. The Declarant's right with respect to approval, limitation, and designation of specific uses for any of the Town Center Land shall be fully assignable or delegable by Declarant at any time and from time to time. As long as it owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1, Declarant may further, in its discretion,

establish such rules, regulations and procedures for initial and continuing review and approval of the use or uses for all Units on a case by case basis.

All provisions of this Declaration and any Use Restrictions and Rules shall apply to all Owners, Occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the Use Restrictions and Rules of the Association.

10.2 Authority to Promulgate Use Restrictions and Rules. The initial Use Restrictions and Rules applicable to all of the Town Center Land are attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, the initial Use Restrictions and Rules may be modified in whole or in part, repealed or expanded by the Declarant or its designee, in its discretion, so long as Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1. Thereafter, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules as they are constituted at that time. At least 30 days prior to the effective date of any such modification, amendment, expansion or repeal of the Use Restrictions and Rules pursuant to this Section, the Board shall send a copy of such modification or amendment, etc. to each Owner. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

Nothing in this Article shall authorize the Board or the Owners to modify, repeal or expand the Design Guidelines. In the event of a conflict between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

10.3 Procedures for Review and Enforcement of Unit Specific Uses. In order to carry out the general plan of development, create enhancements to the Town Center Land and maintain the values thereof, Declarant has been given and retains in its discretion, as provided above in Section 10.1 and in Article XIII and throughout this Declaration, the specific right and authority to limit the specific use or uses of any portion of the Town Center Land, including any one Unit or portions thereof or group of Units, or negatively restrict any Unit or portions thereof or group Units from being used for certain use or uses. Accordingly, no activities within the scope of Section 9.1 shall commence on any portion of the Town Center Land until an application for approval of the proposed use or uses for the specific Unit or Units or other portion of the Town Center Land in question, has been submitted to and approved in writing by Declarant or its designee. Thereafter, the use for all or any portion of a specific Unit or group of Units shall not be changed from that last approved by Declarant in accordance with this Article X unless and until an application for such change in use has been submitted to and approved in writing by Declarant or its designee. Declarant or its designee may require the submission of application forms and such information as it deems necessary to consider any

application for approval of an initial use and/or for the approval of a change in use from one previously approved. Notwithstanding the foregoing, in the event the Declarant fails to approve or to disapprove in writing an application for initial use or for a change of use within thirty (30) days after submission of all requested information and materials, the application and the specific use for which approval is being sought shall be deemed approved unless an extension of such time period is agreed to by Declarant and the applicant. All such review and approval of the use or uses for any portion of the Town Center Land shall be done and made in Declarant's sole and absolute discretion and an approval of a specific use for a Unit or portion thereof, or a group of Units shall not be deemed an approval for any other Units nor shall it constitute a waiver of the right to withhold approval as to any similar proposals for use of a specific Unit or of other Units within the general area. The failure of an Owner to submit and obtain approval for the specific use to be carried out on or within its Unit (whether initial use or change in use), or to comply with such use after approval thereof, shall be deemed a violation of this Declaration and shall be subject to enforcement by Declarant and/or the Association as provided in this Declaration and in the By-Laws. Declarant may, without limitation, designate all or certain of its rights and authority under this Section 10.3 to the ARC.

10.4 Owners' Acknowledgment and Notice to Purchasers. All Owners and Occupants of Units and purchasers are given notice that the specific operational use or uses of each Unit is limited by the use review and approval right of Declarant and the general Use Restrictions and Rules as either of them may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into a contract for the purchase of a Unit, acknowledges the right of Declarant with respect to review and approval of the specific uses of the Town Center Land, agrees to abide thereby, and further acknowledges and agrees that the specific use and enjoyment and marketability of its Unit can be affected and that the Use Restrictions and Rules, including those attached as Exhibit "C", may change from time to time.

## ARTICLE XI EASEMENTS

### 11. Easements

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



11.2 Easement for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any of the Old Town Land, or has the right to annex property pursuant to Section 7.1, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Town Center Land (but not through a structure) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, alley ways, pathways and trails, lakes, ponds, wetlands, and drainage systems; street lights and signage; and all Utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Old Town Land.

Declarant specifically grants to the local water supplier, electric company, telephone company, and natural gas supplier easements across the Town Center Land for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, transformers, meters, boxes, and other facilities, as applicable.

In particular, and not in limitation of the foregoing, if any recorded subdivision plat or other plat of land subject to this Declaration identifies land as an "Alley" or "Alleyway" or "Private Drive" or terms of similar import, the following provisions will apply:

(1) The Alley may be used for vehicular and pedestrian ingress to and egress from the land adjoining the Alley;

(2) The Alley may be used by the local water supplier, electric company, telephone company, natural gas supplier, cable supplier, and other utility suppliers for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, transformers, meters, boxes, and other facilities as applicable.

(3) No fences, gates, or other obstructions, temporary or permanent, will be placed on the Alley;

(4) No property (including bicycles, golf carts, off-road vehicles, carriages, cars, trucks, trailers, or boats) will be placed on the Alley except in the process of ingress to and egress from the adjoining land and except in the process of installing and maintaining the utilities described in (2) above;

(5) The Alley may not be used for any purposes not describe above.

In particular, and not in limitation of the foregoing, the electricity supplier (Georgia Power Company) has the right hereunder to install transformers on the Town Center Land, including land that is part of a Unit. If the transformer is located in the rear yard of a Unit that adjoins an Alley, no fence or other obstruction shall be located between the transformer and the alley, and no fence or other obstruction shall be located within five feet of any side of the transformer.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any of the Old Town Land.

(c) Any damage to a Unit resulting from the exercise of the easements described in subsection (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.3 Easement for Slope Control, Drainage and Waterway Maintenance. The Declarant, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, hereby establishes and reserves a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon each Unit for the purposes of:

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

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

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

(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Town Center Land; and

(e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Town Center Land.

11.4 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Old Town Land, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities and improvements on such property. In addition, Declarant reserves the non-exclusive right and power to grant such specific easements and licenses with respect to the Common Area as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any of the Old Town Land.

11.5 Use of and Limitations on Easements and Licenses. The Owners of Units benefitted by the easements and licenses specified in Sections 11.1 and 11.3 (if any and to the extent additional easements or licenses under Section 11.3 are for the benefit of Unit Owners) of this Declaration and those other persons granted rights herein shall be entitled to use and enjoy said easements and licenses in common with others entitled to use same and shall take no action in or with respect to any of said easements and licenses which would interfere with the rights of other persons to use said easements and licenses or to enjoy the benefits therefrom.

11.6 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and the Use Restrictions and Rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, the members of the ARC and the Modifications Committee pursuant to Article IX, 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. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board. The Owner shall hold the Association harmless for the exercise of the Association's rights under this provision.

11.7 Maintenance, Construction, Utility and Drainage Easements. The Owners of all Units recognize and agree that temporary construction and permanent and perpetual maintenance easements and all rights of access reasonably necessary to permit construction and maintenance of utilities, roads, walkways and storm water drainage on the Town Center Land are hereby granted to and retained by Declarant for the benefit of Declarant and of the Association and their respective Mortgagees, employees, independent contractors, agents and assigns. Such easements must be

granted and conveyed hereafter by each Owner to Declarant and the Association for the benefit of Declarant and of the Association and their respective Mortgagees, employees, independent contractors, agents and assigns. Each Owner, by taking title to its respective Unit, hereby grants and conveys and shall be deemed to have consented and agreed to hereafter designate, grant and convey such easements when requested to do so by Declarant or the Association. Each Owner, by taking title to its respective Unit, shall also be deemed to have agreed to obtain from all appropriate parties, including its Mortgagees, the written subordination of any and all Mortgages, deeds to secure debt, security interests and all other liens that encumber or in any way affect its respective Unit to such easements and to all other easements, rights-of-way and rights of ingress, egress, access and passage now set forth in or otherwise provided for in or contemplated by this Article and such written subordination instruments shall be provided promptly and without delay to Declarant and the Association when requested by Declarant or the Association. Each Mortgagee, note holder under a deed to secure debt, trustee under a deed to secure debt and other holders of any security interests in any Unit by accepting a security interests in or legal or equitable title to a Unit, shall be deemed to have consented to and agreed that its security interests or legal equitable title is subject to said easements and agrees to execute any instrument reasonably required to subordinate its debt and security instruments to such easements, right-of-way and rights of ingress, egress, access and passage, subject to the same not materially adversely affecting the Unit serving as the security for the obligations owed to such Mortgagee or note holder. Such easements will contain terms and conditions reasonably requested by Declarant or the Association, as the case may be, but such easements will not unreasonably interfere with the development, use and occupancy of any Unit or unreasonably affect access to, or operating of, any such Unit. All temporary construction easements, and temporary access rights in connection therewith of Declarant shall terminate automatically when construction of the Common Area for which such easement is granted or retained is completed, but the permanent and perpetual maintenance easements, and access rights in connection therewith of Declarant and the Association shall continue in full force and effect except as hereinafter provided. Prior to the Declarant's or the Association's exercise of any easement rights created by this Section, a written instrument defining the location of the respective easement shall be approved by the appropriate government entity if required by law.

11.8 Roadside Access Easements. There is hereby reserved to Declarant, the Association and the general public an easement for access, adjacent and parallel to all public road rights-of-way and Common Area roads within the Town Center Land, extending from the curb to the far side of any sidewalk or jogging or bicycle path running more or less parallel to the curb, for the purpose of using such sidewalk or path. There is also hereby reserved to Declarant, the Association, and the designees of each, a right to go upon, over and across all property adjacent to public road rights-of-way and Common Area roads within the Town Center Land to maintain,

repair, and replace street trees, street furniture (e.g. park benches), sidewalks and paths, and traffic and directional signs.

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

## ARTICLE XII MORTGAGE PROVISIONS

### 12. Mortgage Provisions

12.1 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 Unit in the case of distribution to such Owner of Insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

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

12.3 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 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## ARTICLE XIII DECLARANT'S RIGHTS

### 13. Declarant's Rights

13.1 Transfer. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an

obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2 Other Activities on Town Center Land. The Declarant and others authorized by Declarant may maintain and carry on upon portions of the Town Center Land such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, and sales offices. The Declarant and its designees shall have easements for access to and use of such facilities.

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

13.4 No Other Covenants Without Declarant Approval. No Person shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Town Center Land without Declarant's review and written consent, which Declarant may withhold or condition in its sole and absolute discretion. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

13.5 Amendment of Design Guidelines. Notwithstanding any contrary provisions of this Declaration, no amendment to or modification of any Design Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1.

13.6 Use Limitations. The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, as long as it owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1, to limit the use of any portion of the Town Center Land, including any one Unit or group of Units, to one or more, but less than all, of the permitted uses within the Old Town Center.

13.7 Changes in Use Limitations. The limitations on use imposed by the Declarant may not be changed without the written consent of the Declarant as long as the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1. Thereafter, or at such time as the Declarant assigns its rights in this regard to the Association, any change in the limitations on use shall require the consent of the Board and the Owner(s) of the affected Unit or Units set forth in a

written instrument recorded in the Public Records. Declarant shall have the further right to establish such rules, regulations and procedures for initial and continuing review, approval and enforcement of the use or uses of and for all Units as provided in Article 10.

13.8 Amendment; Termination of Declarant's Rights. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 30 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

#### ARTICLE XIV GENERAL PROVISIONS

#### 14. General Provisions.

##### 14.1 Duration.

(a) Unless terminated as provided in Section 14.1(b), this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 10 years each, unless terminated as provided herein.

(b) Unless otherwise provided by Georgia law, in which case such law shall control, this Declaration may not be terminated within 30 years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least 75% of the total Units within the Town Center Land and by the Declarant, if the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

##### 14.2 Amendment.

(a) By Declarant. So long as Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1 and for a period of twenty (20) years thereafter, Declarant hereby reserves and shall have the sole right to:

(i) amend this Declaration or any Supplemental Declaration for the purpose of curing any ambiguity or any inconsistency among the provisions contained here;

(ii) include in any contract or Deed or other instrument hereafter made any additional covenants and restrictions, including restrictions on use, applicable to any Unit which do not lower the standards of the covenants and restrictions herein contained;

(iii) release any Unit from any part of the covenants and restrictions contained herein which have been violated if the Declarant, in its sole judgment, determines such violation to be a minor or insubstantial violation.

(iv) amend this Declaration or any Supplemental Declaration in any manner if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units; (d) to enable any reputable private insurance company to insure mortgage loans on the Units; or (e) to satisfy the requirements of any local, state or federal governmental agency; and

(v) amend this Declaration or any Supplemental Declaration without vote or consent of the Owners for any other purpose.

The foregoing amendments may be made without the joinder or approval of any Owner, mortgagee, or the Association.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 67% of the total Class "A" votes in the Association, including 67% of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1. In addition, the approval requirements set forth in Article XII shall be met, if applicable.

Unless a higher percentage is required by Supplemental Declaration, any Supplemental Declaration may be amended by the vote of Members representing 67% of the total Class "A" votes subject to such Supplemental Declaration with the consent of the Board, and so long as the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1, the consent of the Declarant. Any amendment of the Use Restrictions and Rules shall comply with the procedure set forth in Section 10.2 and shall not be subject to the requirements set forth in this Section.

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

(c) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the



written consent of the Declarant or the Class "B" Member, respectively (for the assignee of such right or privilege).

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

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

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

14.4 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Owners holding at least 75% of the total Class "A" votes. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; (d) counter claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods and services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIV, if applicable. In any judicial or administrative proceeding involving the Association and Members, payment of the prevailing party's reasonable attorney fees actually incurred shall be included in the award.

14.5 Use of the Words "Old Town": No Person shall use the words "Old Town" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the terms "Old Town" in printed or promotional matter where such term is used solely to specify that particular property is located within Old Town and/or Old Town Center and the Association and any other community association located on Old Town shall be entitled to use the words Old Town in its name.

14.6 Compliance. Every Owner and Occupant of any Unit shall comply with the Governing Documents. Subject to the terms of Article XIV, failure to comply shall be

grounds for an action by the Association, the Declarant or, in a proper case, by an aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3. In any legal or equitable proceeding for the enforcement of or to remedy the violation of these covenants or any provision hereof, the losing party or parties shall pay the reasonable attorney's fees and costs of the prevailing party or parties, in such amount as may be fixed by the court in such proceeding. Such fees upon appropriate docketing of a judgment to such effect shall become a lien against the Unit (if any) of the losing party. All remedies provided herein and/or otherwise available, at law or in equity, shall be cumulative and not exclusive.

14.7 Notice of Sale or Transfer of Title. Subject and in addition to the requirements and provisions of Article XV, any Owner desiring to sell or otherwise transfer title to its Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.8 Exhibits. Exhibits "A," "B," "C," "D," "E," "F," and "G" attached to this Declaration are incorporated herein by reference.



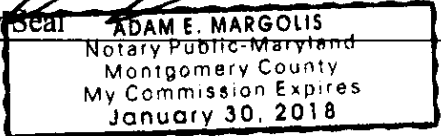
14.9 Conflict or Ambiguity. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction relating to construction against the Declarant or the ARC are hereby waived by each Owner.

14.10 Further Assurance. Each Owner covenants and agrees to sign, execute and deliver, or cause to be signed, executed and delivered and to do or make, or cause to be done or made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably requested by the Declarant, the Association or the ARC for the purpose of or in connection with clarifying, amending or otherwise consummating the transactions and matters set forth herein.

14.11 Standards for Review. Whenever in this Declaration the Declarant, the Association or the ARC has the right to approve, consent or require any action to be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein, be in the sole and absolute discretion of the Declarant, the Association or the ARC respectively, and such approval, consent or required action shall be final and conclusive.

(Signature on following page)

SIGNATURE PAGE TO  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR OLD TOWN RESIDENTIAL

Signed, sealed, and delivered in the presence of : 	DECLARANT: OLD TOWN RESIDENTIAL, INC., A Georgia corporation, by its sole member
Unofficial Witness	
Notary Public Notary Seal 	By Calvin S. Koonce

- Exhibit A: Old Town Land (entire development)
- Exhibit B: Town Center Land
- Exhibit C: Use Restrictions and Rules
- Exhibit D: Assessments and Voting Rights
- Exhibit E: Covenant to Share Costs with Old Town Apartments of Columbus, LLLP
- Exhibit F: Landscape Agreement: Calvin S. Koonce

Exhibit A  
Old Town Land (entire development)

All those tracts and parcels of land situate, lying and being in the State of Georgia, County of Muscogee and City of Columbus, in Land Lots 263, 269, 270, 294, and 295, 19th District, Muscogee County, Georgia identified as "PARCEL 4, 214.523 ACRES", "PARCEL FIVE, 32.387 ACRES", "PARCEL SIX, 1.131 ACRES", and "PARCEL SEVEN, 14.324 ACRES" on the "Plat" (herein so called) titled "Revised Lot Combination Survey for Old Town Mixed Use Community", Part of Land Lots 263, 269, 270, 294, and 295" dated December 16, 2013" by Farner Barley and Associates, recorded December 26, 2013 in Plat Book 164, Page 66, Muscogee County, Georgia Records.

Exhibit B

Town Center Land

Lots 1-9 Block "A", Lots 10-14 Block "B", and Lots 28-32 Block "C", Section One, as shown on the "Plat" (herein so called) titled "Old Town Section One" lying in Land Lots 270 and 294, Columbus, Muscogee County, Georgia dated November 18, 2014, prepared by Harris Gray, LLC, recorded in Plat Book 164, Pages 179 & 180.

Exhibit C  
Use Restrictions and Rules

EXHIBIT C

**OLD TOWN RESIDENTIAL**

**USE RESTRICTIONS AND RULES**

The restrictions and rules contained herein shall pertain and apply to all Units and to all improvements constructed, erected or placed thereon. The restrictions and rules set forth herein are minimums only. Many subjects addressed herein are also addressed in the Design Guidelines or will be considered by the ARC in reviewing proposed improvements; the standards of the Design Guidelines and the decisions of the ARC, if more restrictive or stringent, shall control. Nothing herein permits any improvement to be placed, erected, installed, or constructed upon any Unit or thereafter modified, added to, or altered except in compliance with the Declaration and the Design Guidelines, and with approval of the ARC. These restrictions and rules are subject to amendment at any time and from time to time as provided in the Declaration.

1. Use and Setback Restrictions and Requirements.

(a) Restriction of Use: Single-Family Detached Dwellings.

(i) Units may be used for residential purposes only and for no other purpose.

(ii) No more than one (1) single-family detached dwelling, constituting the residence on the Unit (and excluding any permitted accessory structure approved by the ARC) shall be constructed, erected or permitted to remain on any Unit.

(b) Setback Requirements.

(i) No structures (other than driveways, walkways, newspaper tubes (or similar device), landscaping, and other structures for a driveway entrance, all of which are subject to approval by the ARC), shall be constructed, erected or placed on a Unit unless its location is in compliance with the setback and other structure location requirements applicable to such Unit set forth and contained in the Design Guidelines.

(ii) Due to the topography of the Town Center Land, the ARC shall have the right and authority, in its sole discretion, to alter or waive any portion or all of the setback or other structure location requirements applicable to a Unit; provided, however, any such alteration or waiver by the ARC shall not relieve any Owner from the obligation to comply with the applicable zoning ordinances of Columbus, Georgia, including, without limitation, any requirement of obtaining any variance or other approval of or with respect to any proposed construction or installation which may be required thereunder.

2. Resubdivision of Units.



(a) General. No Unit may be subdivided into smaller Units each intended for ownership and use as a single-family dwelling site without prior written approval of the ARC.

(b) Declarant's Right. Notwithstanding the foregoing, the Declarant hereby expressly reserves the right to replat any Unit or Units owned by the Declarant.

(c) Combining Units. The Declarant or the Owner of any Units, subject to prior written approval by the ARC, may combine two or more Units into a single Unit for the purpose of constructing a single residence thereon; provided, however, that such combined Unit may not be subdivided thereafter.

3. Erosion Control. No land-disturbing activity which may cause or create erosion or siltation shall be undertaken on any Unit, unless such activity is performed or conducted in accordance with the standards and requirements of all applicable state and local statutes and ordinances, and all rules and regulations promulgated pursuant to any such statutes and ordinances, relating to soil erosion and sedimentation prevention and control, and the Design Guidelines. Each Owner, by acceptance of a deed conveying a Unit, acknowledges and agrees that neither the ARC, the Association nor the Declarant shall have any liability or responsibility for ensuring compliance by Owners, their contractors or their agents with any applicable standards and requirements of any such state and local statutes, ordinances, rules and regulations in connection with any such land-disturbing activities.

4. Landscaping. Trees, shrubs, grasses, ground covers, and other landscaping materials are "Improvements" and therefore the installation, maintenance, removal, and replacement are subject to the Design Guidelines and ARC approval.

5. Accessory structures: Temporary Buildings and Other structures.

(a) No accessory structures, including, without limitation, guest houses, swimming pools, pool houses, tennis courts, playhouses, greenhouses, doghouses, playhouses, flagpoles, exterior television or radio antennae, satellite dish or receiver, and solar equipment, shall be installed, erected, constructed and maintained on any Unit or structure without the prior written approval by the ARC of plans and specifications therefor. No decorative or ornamental objects, including, without limitation, sculptures, birdbaths and fountains, shall be installed, erected, constructed and maintained on the street side of any Unit, without the prior written approval of the ARC. No antennae shall be installed or used on any Unit or structure for the purpose of transmitting electronic signals. Guidelines relating to the construction, installation or erection of accessory structures on Units, including, but not limited to, limitations and restrictions on the location, size, height and exterior materials of accessory structures, may be included in the Design Guidelines. No trampolines, swing sets, basketball goals, or other playground equipment shall be located in a front or side yard.

(b) Any approval by the ARC of plans and specifications for any accessory structure shall not relieve any Owner from the obligation to comply with the applicable zoning ordinances

of Columbus, Georgia, including, without limitation, any requirement of obtaining any variance or other approval of or with respect to any such proposed accessory structure, or the construction or installation thereof, which may be required thereunder.

(c) No structures shall be constructed, erected or permitted to remain on any Unit prior to the construction of a residence thereon.

(d) No temporary building or other structures of a temporary character, trailer, tent, shack, or building under construction shall be used, temporarily or permanently, as a residence on any Unit. No Owner, contractor or builder shall erect on any Unit any temporary building or other structures of a temporary character or any trailer for use in connection with construction on such Unit, without the prior written approval of the ARC.

#### 6. Signs.

(a) No signs of any character or description whatsoever and no advertising matter shall, without the prior written approval of the ARC, be installed, placed or maintained on any Unit, or on any portion of a structure visible from the exterior thereof, except:

(i) such signs as may be required by legal proceedings;

(ii) professional security signs not to exceed six (6) inches by six (6) inches in size displayed from within a residence on a Unit;

(iii) not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of six (6) square feet and shall not refer to or display a dollar amount or price; provided that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use by Owners, the signs made available by the Association must be used; and

(iv) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ARC.

(b) During approved construction of any structure, signs used by a contractor or builder to advertise the property during the construction and sale period will be permitted, subject to the prior approval thereof by the ARC.

(c) Guidelines relating to the size, color, design and location of signs are included in the Design Guidelines.

7. Fences and Walls. No fence or wall shall be erected, placed, altered or allowed to remain on any Unit except as provided in the Design Guidelines.

8. Clotheslines: Screening of Garbage Cans, Wood Piles; Air Conditioners and Other Equipment.

(a) Clotheslines or drying yards shall not be permitted on any Unit.

(b) All garbage or sanitary cans, containers and receptacles, wood piles, air conditioners and other equipment shall be kept screened by adequate planting or fencing so as to conceal them from view from streets, the private drives, and adjacent property, and may be maintained in an enclosed or landscaped area in accordance with plans and specifications approved by the ARC.

9. Mailboxes and Newspaper Tubes. No mailbox shall be placed, erected, allowed or maintained on any Unit if the Association provides a central mail kiosk. If a mail kiosk is not provided, no mailbox shall be placed, erected, allowed or maintained on any Unit without the prior written approval by the ARC of plans and specifications therefor, and if at the time of any desired installation of a mailbox, the ARC has approved a mailbox of a particular size, color, style and design for use by all Owners, then such approved mailbox must be used.

(b) No newspaper tube or similar device shall be placed, erected, allowed or maintained on any Unit if the Association provides a central newspaper kiosk. If a newspaper kiosk is not provided, no newspaper tube or similar device shall be placed, erected, allowed or maintained on any Unit without the prior written approval by the ARC of plans and specifications therefor, and if at the time of any desired installation of a newspaper tube or similar device, the ARC has approved a newspaper tube or similar device of a particular size, color, style and design for use by all Owners, then such approved newspaper tube or similar device must be used.

10. Maintenance.

(a) Each Owner shall keep and maintain each Unit and structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (1) the replacing, repairing, painting and staining (or other appropriate external care) of all structures, (ii) the seeding, watering, weeding and mowing of all lawns; (iii) keeping and maintaining Units free of unsightly weeds, rubbish, trash, debris, garbage and other unsightly materials; and (iv) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street or private drive traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Unit to the margin or curbing of any right-of-way bordering said Unit, unless the maintenance of such area is being performed by the Association.

(b) Guidelines relating to the maintenance of structures and landscaping are included in the Design Guidelines.

11. Personal and Commercial Vehicles and Trailers. All motor vehicles owned, leased or used by any Owner or kept on any Unit shall be currently licensed and maintained in proper operating

condition so as not to be or create a hazard or nuisance by reason of noise, exhaust emissions or appearance. Motor vehicles owned or leased by an Owner or any occupant of a Unit, including trail bikes, all-terrain vehicles, and motorcycles, shall not be parked on the streets (public or private). All motor vehicles, including trail bikes, all-terrain vehicles, and motorcycles, shall be driven only upon paved streets and driveways, and otherwise in accordance with applicable laws and ordinances. Trucks of more than four wheels not used for daily transportation, trucks of more than six wheels, boats, trailers, campers, recreational vehicles not used for daily transportation, and similar devices must be parked in the rear of the residence and screened from view from the streets and Town Center Land with privacy fences, landscaping, or other improvements approved by the ARC.

12. Animals. No livestock, poultry or other agricultural animals may be raised, bred or kept on any Unit or in any structure thereon. No other animals of any kind, except dogs, cats, other animals customarily accepted as household pets, and animals expressly approved by the ARC may be kept on any Unit or in any structure thereon. Owners shall not allow such household pets to become a nuisance or annoyance to the neighborhood. Such permitted household pets shall not be raised, bred or kept for commercial purposes.

13. Solid Waste.

(a) No person shall dump rubbish, debris, garbage, or any other form of solid waste on any Unit or on Town Center Land.

(b) No person, shall burn rubbish, debris, garbage, or any other form of solid waste on any Unit or on Town Center Land, except builders as an incident to the construction of improvements on a Unit.

(c) Except for building materials employed during the course of construction of any structure approved by the ARC, no lumber, waste concrete, metals, bulk materials or solid waste of any kind shall be kept, stored or allowed to accumulate on any Unit.

(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, garbage or sanitary cans, containers and receptacles may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up, and shall be returned to their screened or enclosed locations by the end of the day on which pick-up is made. At all other times such devices shall be screened or enclosed in the manner approved by the ARC so as to conceal them from view from streets, the private drives and adjacent property.

(e) During approved construction of any structure on a Unit, each Unit shall be kept free and clear of debris and trash, and the builder, contractor and/or Unit Owner shall provide or cause to be provided standard construction on-site sanitary facilities for their workmen.

(f) Except during approved construction of any structure on a Unit, no garbage or solid waste can, dumpster, container or receptacle which serves or is intended to serve more than a single residence (including but not limited to dumpsters or containers customarily used to serve commercial facilities) may be placed or kept, temporarily or permanently, on any Unit.

14. Streets. All Units are sold with the provision that the Declarant, the Association, or Columbus, Georgia, may at any time, notwithstanding any provisions hereof to the contrary, lower or raise the surfaces of the streets and the private drives to conform with the grades established by an engineer of the Declarant, the Association, or Columbus, Georgia, and any such action shall in no way give rise to a claim against any of the foregoing for damages to the abutting property.

15. Nuisances. No noxious, destructive or offensive activity shall be carried on upon any Unit or on Town Center Land and nothing shall be done thereon which may be or become an annoyance or nuisance to the neighborhood. No Owner of a Unit may use or allow the use of the Unit or any Town Center Land in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or their families or guests, or in such a way as to constitute, in the Association's sole opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

16. Yards. No motor vehicles (including trail bikes, all-terrain vehicles, and motorcycles), trailers, boats, jet-skis, airplanes, tractors, golf carts, recreational vehicles, go karts, or lawn mowers shall be parked in the front yard.

EXHIBIT D  
 Assessments and Voting Rights  
 Part I: Units

1. **General.** Each Unit shall have the right to cast votes and the obligation to pay assessments based on the number of "Assessment and Voting Points" (herein so called) assigned the Unit in accordance with the following. Sections 8.11 and 14.2 of the Declaration provide for the amendment of this Exhibit.
2. **Land Points.** Each Unit shall be assigned one Point ("Land Point") for each one square foot of land, or fractional part thereof, comprising the Unit.
3. **Building Points.** Each Unit shall be assigned one Point ("Building Point") for each one square foot of gross floor area, or fractional part thereof, within the Improvements (as defined below) comprising the Unit. "Improvements" means structures intended for use and occupancy as permitted by these restrictions and for which an initial certificate of occupancy has been issued (if required by applicable law) or which is substantially complete as determined by the Association, whichever is earlier; Improvements include all parts of the structure under roof, including porches whether enclosed or not.
4. **Benefit Factor and Classification.** The sum of the Land Points and Building Points for a Unit shall then be multiplied by the Benefit Factor shown below according to the Use Classification of the Unit shown below, and the product is the "Assessment and Voting Points" (herein so called) for the Unit; a product that is a fraction will be rounded to the nearest whole number (0.50 is rounded up).

Use Classification	Benefit Factor
Retail/Office/Campus/Civic/Multifamily Residential that is not self-contained	5.0
Retail/Office/Campus/Civic/Multifamily Residential that is self-contained	1.0
Single Family Residential	1.0
"Self-contained" means the Unit contains all the facilities needed for its operation, such as a free-standing building or buildings with parking on the Unit.	

5. **Determination by Declarant.** The Declarant, for so long as the Declarant owns any of the Old Town Land or has the right to annex property pursuant to Section 7.1, and thereafter the Board of Directors, shall determine in its sole discretion the Use Classification for each Unit. By way of example only, the Use Classifications may include the following:
  - a. Retail: restaurants, specialty retail shops, bed and breakfast inns;
  - b. Office/Campus/Civic: office buildings, medical and professional buildings, ambulatory care, academic campuses, town hall, police

- department, fire department, wellness center, church, sales office, library;
- c. Multifamily Residential: a building or buildings containing separate bathing, kitchen, sanitary and sleeping facilities designed to be occupied by three or more families living independently of each other as a separate housekeeping unit.
  - d. Single Family Residential: Homes for occupancy by a single family, including detached homes, townhomes, and zero lot line homes.
6. **Re-evaluation.** Units are subject to re-evaluation of size, use, and other factors relevant to determination of Assessment and Voting Points and adjustment of Assessment and Voting Points at the sole option of the Declarant or Board, as applicable, at any time.
  7. **Assessments.** The assessment to be levied on a Unit is determined by multiplying the Assessment and Voting Points assigned to the Unit by the General Assessment per Assessment and Voting Point determined as provided in Article VIII. The Board of Directors shall establish an annual date for determining the Assessment and Voting Points totals for all Units. The Board of Directors shall include a summary of the computation of the assessment with the annual notice of assessment.

#### Part II: Class C Members

1. **General.** Each Class C Member shall have the right to cast votes based on the number of Assessment and Voting Points assigned the Class C Member in accordance with the following. Class C Members are not subject to assessments. Sections 8.11 and 14.2 of the Declaration provide for the amendment of this Exhibit.
2. **Assessment and Voting Points.** The Assessment and Voting Points assigned to a Class C Member during a Year shall bear the same proportion to the total Assessment and Voting Points outstanding after the assignment that the amount paid and to be paid by the Class C Member for the Year bears to the sum of (1) the amount paid and to be paid by all Class C Members for the Year and (2) the amount paid and to be paid as General Assessments by all Units for the Year.
3. **Application.** The determination in Item 2 shall be made as of the first day of each Year (taking into account only the Units subject to assessment on such date and the Covenants to Share Costs in existence on such date) and may be remade during the Year (taking into account only the Units subject to assessment on such date and the Covenants to Share Costs in existence on such date) in the discretion of the Board of Directors. The Assessment and Voting Points assigned to a Class C Member will change from Year to Year as the as the components of Item 2 above change. The amount paid and to be paid in each case shall be based on the assumption that all Units and Class C Members in existence on the determination date timely pay the amounts owed to the Association.

For example, assume that on January 1 of a Year, the amount to be paid during the Year as General Assessments for all Units subject to assessment on such date is \$200,000 and that the amount to be paid under the single Covenant to Share Costs in effect on such date is \$40,000. Further assume that the total Assessment and Voting Points for such Units is 1,500,000. Therefore, the Assessment and Voting Points assigned to the Covenant to Share Costs ("X") is determined as follows:

$$X \div (1,500,000 + X) = \$40,000 \div (\$200,000 + \$40,000)$$

$$X = 300,000 \text{ Voting and Assessment Points}$$



EXHIBIT E  
Covenant to Share Costs With Old Town Apartments of Columbus, LLLP

**EXHIBIT E**

	AFTER RECORDATION PLEASE RETURN TO: Charles H. Ford, Jr. Page, Scrantom, Sprouse, Tucker & Ford, P.C. P. O. Box 1199 Columbus, GA 31902-1199
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**COVENANT TO SHARE COSTS**  
**OLD TOWN RESIDENTIAL OWNERS ASSOCIATION, INC.**  
**OLD TOWN APARTMENTS OF COLUMBUS, LLLP**

THIS COVENANT TO SHARE COSTS (this "Covenant") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between OLD TOWN RESIDENTIAL OWNERS ASSOCIATION, INC., a Georgia nonprofit corporation ("Residential"), and OLD TOWN APARTMENTS OF COLUMBUS, LLLP, a Georgia limit liability limited partnership ("Apartments").

**WITNESSETH:**

A. Apartments is the beneficial owner of certain real property located in Muscogee County, Georgia, described on Exhibit "A" (the "Apartment Tract"). There are presently under construction on the Apartment Tract an apartment complex containing 140 "Multifamily Dwelling Units" as defined below. "Multifamily Dwelling" has the meaning given in the Columbus, Georgia Unified Development Ordinance, Chapter 13, Article 1, which is "a building or buildings containing separate bathing, kitchen, sanitary and sleeping facilities designed to be occupied by three or more families living independently of each other as a separate housekeeping unit. A "Multifamily Dwelling Unit" is one of the parts of a Multifamily Dwelling that is designed to be occupied independently as living quarters by a single family.

B. Residential is the association of owners of certain real property located in Muscogee County, Georgia, as more particularly set forth in the Declaration of Covenants, Conditions, and Restrictions for Old Town Residential ("Declaration") dated January 30, 2015, made by Old Town Residential, Inc., a Georgia corporation (therein and herein referred to as the "Declarant"), recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Muscogee County, Georgia Records. Capitalized terms not defined herein and not proper nouns shall have the meaning given in the Declaration unless the context clearly requires otherwise.

C. Section 4.13 of the Declaration authorizes the Declarant (Old Town Residential, Inc., a Georgia corporation) to enter into Covenants to Share Costs with owners of other property and as part thereof to allow the owner and designated persons to use the Common Area of the Association.

D. The Apartment Tract is near the Common Area and Residential and Apartments desire to enter into this Covenant that provides for the use of certain of the Common Area by the owner of the Apartment Tract and designated others.

NOW, THEREFORE, for and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Apartments to Residential, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by Apartments, Apartments and Residential hereby covenant and agree as follows:

1. **COMMON AREA.** The term "Common Area" as used herein means the "Common Area" as defined in the Declaration, as it may be amended, and as such defined "Common Area" exists from time to time, excluding however all "Exclusive Common Area" as defined in the Declaration, as it may be amended, and as such defined "Exclusive Common Area" exists from time to time :
2. **USE OF COMMON AREA.**
  - 2.1. Apartments and its employees, lessees, invitees, clients, customers and guests are entitled to use the Common Area on the same basis, subject to the same sanctions for violation of the Governing Documents, and under the same rules and regulations as Owner's and their employees, lessees, invitees, clients, customers and guests, as applicable, subject to reasonable regulation by the Board and further subject to all such parties' obligation to abide and be bound by the Governing Documents and any such rules and regulations promulgated thereunder.
  - 2.2. Rules and regulations of use are subject to amendment at any time and from time to time by Residential; the rules and regulations shall not discriminate between users except on a basis reasonably related to the burden of use on the enjoyment of the Common Area by all users, including level of use and cost of maintenance.
  - 2.3. Apartments will be obligated for and will promptly pay monetary fines imposed as provided in the Declaration upon a party using the Common Area hereunder.
  - 2.4. Users may be charged a reasonable amount to use the Common Area, subject to the nondiscrimination provisions of Section 2.2.
3. **MAINTENANCE OF COMMON AREA.** Residential will maintain the Common Area as provided in the Declaration.
4. **NATURE OF RIGHTS.**

- 4.1. The rights granted hereunder are a license and do not constitute an interest in land. Apartments is not entitled hereby to share in any insurance or condemnation proceeds or to determine their use.
  - 4.1.1. This Agreement does not create in Apartments any rights to participate in the management of Residential other than the right to Vote as a Class "C" Member on matters subject to vote of the Members as provided in the Declaration. As examples and not in limitation, Apartments has no right (other than the right to Vote as a Class "C" Member to the extent provided in the Declaration) to object to: any increases, decreases, or changes in the Common Area; the maintenance of the Common Area; rules and regulations regarding the Common Area; or the granting of rights to others to use the Common Area.

**5. CHANGES IN APARTMENT TRACT.**

- 5.1. The 140 Dwelling Unit apartment complex presently under construction on the Apartment Tract does not occupy the entire Apartment Tract.
- 5.2. Apartments has the right, but not the obligation, to construct any additional improvements it elects on the Apartment Tract, including without limitation, single family, duplex, or multifamily residential dwellings; buildings for commercial use; recreational facilities; and public streets.
  - 5.2.1. Any part of the Apartment Tract on which is constructed Multifamily Dwellings will be subject to this Agreement.
  - 5.2.2. Any land that is part of the Apartment Tract on which there are no Multifamily Dwellings will be removed from this Agreement upon request of Apartments, but no Multifamily Dwellings may be constructed on the removed land during the term of this Agreement. If Apartments provides Residential a survey of the land proposed to be removed, together with a certification that the land contains no Multifamily Dwellings and an amendment to this Agreement in form reasonably satisfactory to Residential providing that the land is released from this Agreement and that no Multifamily Dwellings may be constructed on the removed land during the term of this Agreement, Residential will execute the amendment.
- 5.3. If the entire Apartment Tract (as it may then exist) is sold, Apartments will remain liable for the Fees hereunder until all of the following conditions are satisfied:
  - 5.3.1. Residential is notified of the sale;
  - 5.3.2. All amounts due and payable hereunder (including sanctions) are paid in full; and
  - 5.3.3. The purchaser has executed an assumption of its obligations under this Covenant in the form provided by Residential.
- 5.4. If the Apartment Tract is divided into two or more separate tracts with different ownership, Apartments will remain liable for the Fees hereunder until all of the following conditions are satisfied:
  - 5.4.1. Residential is notified of the division;
  - 5.4.2. The owners of the new tracts and Apartments agree on the number of Multifamily Dwelling Units on each tract.
  - 5.4.3. All amounts due and payable hereunder (including sanctions) are paid in full; and

5.4.4. Each owner has executed an assumption of its obligations under this Covenant in the form provided by Residential.

**6. COMPENSATION**

6.1. The owner of land subject to this Agreement (initially Apartments) will pay Residential an "Annual Fee" (herein so called) per Multifamily Dwelling Unit located on the land as follows:

Calendar Year(s)	Annual Fee per Multifamily Dwelling Unit	Monthly Installment
2015-2030	\$300	\$25.00
2031-2038	159	13.25

6.2. The Annual Fee will be paid in monthly installments as shown above; the first installment for a Year shall be due and payable on January 1 of the year and an additional monthly installment shall be due and payable on the first day of each succeeding month in the Year.

6.3. If a Multifamily Dwelling Unit on land subject to this Agreement is not complete and ready for occupancy on the first day of the Year, the Fee with respect to the Unit shall begin with the first full month after the Unit is complete and ready for occupancy.

7. **FAILURE TO PERFORM.** If either party fails to comply with the terms of this Covenant, and such failure continues for 30 days following written notice by the other party, or if the failure reasonably requires more than 30 days to cure and the defaulting party fails to commence cure with 30 days following written notice and to diligently complete the cure, then in addition to all other remedies available at law or in equity, the other party may terminate this Covenant.

8. **TERM.** This Covenant shall continue until December 31, 2038.

9. **MEMBERSHIP IN RESIDENTIAL.** Apartments, by virtue of being a party to a Covenant to Share Costs, is a Class "C" Member of Residential.

**10. MISCELLANEOUS.**

10.1. **Successors and Assigns.** The rights and obligations herein run with the land and benefit and bind the owners of the Apartment Tract and Common Area and their successors, assigns and successors in title.

10.2. **Severability.** If any term, provision, covenant or Covenant contained in this Covenant or the application thereof to any person or circumstance is held to be invalid and illegal or unenforceable, the validity of the remainder of this Covenant or the application of such term, provision, covenant or Covenant to the persons or circumstances other than those to which it is held invalid or unenforceable will not be affected thereby.

- 10.3. Choice of Law. This Covenant will be governed and construed in accordance with laws of the State of Georgia.
- 10.4. Amendment. This Covenant may not be amended, altered or modified except by an Covenant in writing and signed by the owners of the Apartments Tract and Residential
- 10.5. Notices. Notices given pursuant to this Covenant will be effective only if in writing and delivered (i) in person, (ii) by courier, (iii) by reputable overnight courier guaranteeing next business day delivery, (iv) if sent on a business day during the business hours of 9:00 a.m. until 7:00 p.m., eastern time, via facsimile, with a copy to follow by reputable overnight courier guaranteeing next business day delivery, or (v) by United States certified mail, return receipt requested. All notices will be directed to the other party at its address provided below or such other address as either party may designate by notice given in accordance with this Section 10.5. Notices will be effective (i) in the case of personal delivery or courier delivery, on the date of delivery, (ii) if by overnight courier, 1 business day after deposit with all delivery charges prepaid, (iii) if by facsimile, on the date of transmission, provided that a confirmation sheet is received and a second copy is sent as required above, and (iv) in the case of certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or 5 business days after the date of posting by the United States Post Office. The notice addresses for Apartments and Residential are as follows:

<p>If to Residential: Old Town Residential Association, Inc. 2900 Warm Springs Road Columbus, Georgia 31904 PHONE: (706) 323-6401 FAX: (706) 571-0340 ATTN: Genevieve C. Green</p>	<p>If to Apartments: Old Town Apartment, LLLP 2900 Warm Springs Road Columbus, Georgia 31904 PHONE: (706) 323-6401 FAX: (706) 571-0340 ATTN: Genevieve C. Green</p>
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(signatures on following page)

Signature Page To  
**COVENANT TO SHARE COSTS**  
OLD TOWN RESIDENTIAL OWNERS ASSOCIATION, INC.  
OLD TOWN APARTMENTS OF COLUMBUS, LLLP

IN WITNESS WHEREOF, Apartments and Residential have caused this Covenant to be executed under seal by their duly authorized representatives as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

RESIDENTIAL:

Old Town Residential Owners Association, Inc.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
(NOTARY SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signed, sealed and delivered  
in the presence of:

APARTMENTS:

Old Town Apartments of Columbus, LLLP

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
(NOTARY SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT "A". Description of the Apartment Tract

**EXHIBIT "A"**

Description of the Apartment Tract

The land described as "Parcel 5 32.387 acres" on the "Plat" (herein so called) titled "Revised Lot Combination Survey for Old Town Mixed Use Community", Part of Land Lots 263, 269, 270, 294, and 295" dated December 16, 2013" by Farnier Barley and Associates, recorded December 26, 2013 in Plat Book 164, Page 66, Muscogee County, Georgia Records. A copy of the Plat is attached hereto.



**EXHIBIT F**  
Landscape Agreement With Calvin S. Koonce

**EXHIBIT F**

	AFTER RECORDATION PLEASE RETURN TO: Charles H. Ford, Jr. Page, Scrantom, Sprouse, Tucker & Ford, P.C. P. O. Box 1199 Columbus, GA 31902-1199
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**LANDSCAPE AGREEMENT**

(Veterans Parkway Commercial)

THIS LANDSCAPE AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between OLD TOWN RESIDENTIAL OWNERS ASSOCIATION, INC., a Georgia nonprofit corporation ("Residential"), and CALVIN S. KOONCE ("Koonce").

**WITNESSETH:**

A. Koonce owns certain real property located in Muscogee County, Georgia, described on Exhibit "A" (the "Commercial Tract") which is adjacent to Veterans Parkway and to Masee Lane, public streets.

B. Residential is the association of owners of certain real property located in Muscogee County, Georgia which is served by Veterans Parkway and Masee Lane. RESIDENTIAL is created pursuant to the Declaration of Covenants, Conditions, and Restrictions for Old Town ("Declaration") dated January 30, 2015, which is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Muscogee County, Georgia Records, (the "Residential Tract" means the land subject to the Declaration at the applicable time, which includes the land now subject to the Declaration together with any land made subject to the Declaration prior to the applicable time).

C. Residential desires that the landscaping on the right of way of Veterans Parkway and Massee Lane which adjoins the Commercial Tract is maintained in a first class condition in order to provide an attractive entrance for persons travelling to the Residential Tract.

NOW, THEREFORE, for and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Residential to Koonce, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by Koonce, Koonce and Residential hereby covenant and agree as follows:

1. **LANDSCAPE AREA.** The "Landscape Area" consists of:

- 1.1. The part of the north and south right of way of Massee Lane lying between the back of the curbing and the Commercial Tract, including the entrance island and other landscaping features at the intersection of Massee Lane and Veterans Parkway, to the extent that the city of Columbus, Georgia will permit a private party to install landscaping thereon and maintain the same (herein referred to as the "Massee Lane Landscaping Area"); and
- 1.2. The part of the west right of way of Veterans Parkway lying between the back of the curbing and the Commercial Tract, to the extent that the city of Columbus, Georgia will permit a private party to install landscaping thereon and maintain the same (herein referred to as the "Veterans Parkway Landscaping Area").

The Massee Land Landscaping Area and Veterans Parkway Landscaping Area are collectively referred to as the "Landscaping Area" and are generally shown on Exhibit "B".

2. **COMMUNITY WIDE STANDARD.** Section 1.12 of the Declaration provides that the "Community Wide Standard" is "the standard of conduct, maintenance, or other activity generally prevailing throughout the [land subject to the Declaration]. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee."

3. **LANDSCAPE INSTALLATION.**

- 3.1. Koonce will install trees, shrubs, flowers, grass, ground cover, and irrigation systems (collectively the "Landscaping") in the Landscaping Areas that are required by the Community Wide Standard as reasonably determined by the Architectural Control Committee.
- 3.2. Landscaping has been installed in the Massee Lane Landscaping Area.
- 3.3. Landscaping will be installed in the Veterans Parkway Landscaping Area promptly after the ongoing widening of Veterans Parkway is completed with respect to the Veterans Parkway Landscaping Area.

4. **PERFORMANCE OF LANDSCAPING MAINTENANCE; REIMBURSEMENT.**

- 4.1. Koonce will cause the Landscaping to be maintained in first-class condition at all times, in accordance with the Community Wide Standard.
  - 4.2. Residential will engage a reputable and first class landscaping "Contractor" (herein so called), subject to the approval of Koonce, which approval will not be unreasonably withheld, delayed, or conditioned, to maintain the Landscaping as provided herein. Residential will monitor the work of the Contractor and use its best efforts to cause the Contractor to perform the maintenance as provided herein.
  - 4.3. Koonce will reimburse Residential monthly the reasonable costs actually incurred by Residential with the Contractor within 30 days after receipt of written request from Residential for reimbursement accompanied by reasonable proof of the costs incurred by Residential. If Koonce fails to reimburse Residential within such 30 days, Residential will immediately pay Residential a late charge of five percent (5%) of the amount due.
5. The following standards shall apply to maintenance of the Landscaping:
- 5.1. **TREES**
    - 5.1.1. Staking
      - 5.1.1.1. The purpose of staking trees is to support and protect young trees until they are able to stand alone
      - 5.1.1.2. All tree stakes and ties shall be maintained to properly support the tree. Stakes should not remain on trees for longer than a one year period.
    - 5.1.2. Pruning
      - 5.1.2.1. All trees shall be allowed to grow to their natural genetic form and size, unless specifically excepted.
      - 5.1.2.2. All trees shall be pruned to promote structural strength and to accentuate the natural form and features of the tree.
      - 5.1.2.3. Pruning must be carried out to permit unobstructed passage to pedestrians and motor vehicles and to prevent sight restrictions near intersections. This means that branches should be maintained to 7-1/2 ft. above sidewalks and 12 ft. above vehicular areas. Shrubs and groundcover must be trimmed to avoid growth into sidewalks and curbs
      - 5.1.2.4. Stripping of lower branches ("raising up") of young trees shall not be permitted. Lower branches shall be retained in a "tipped back" or pinched condition with as much foliage as possible to promote trunk caliper. Lower branches should be cut off only after the tree is able to stand erect without staking or other support.
      - 5.1.2.5. Thinning of certain species and individual specimens may be required to prevent wind damage. Suckers, water sprouts, rubbing and heavily laden branches shall be removed to provide less wind resistance.
    - 5.1.3. Spraying
      - 5.1.3.1. Trees shall be sprayed according to best horticultural practices.
    - 5.1.4. Fertilization
      - 5.1.4.1. Most trees shall be fertilized annually, in the spring, with a complete fertilizer. Fertilization of mature trees shall be required only if the trees show a definite need for fertilization.

5.1.4.2. All trees shall be observed for signs of nutrient deficiencies and treated to correct deficiencies throughout the year.

## 5.2. SHRUBS AND VINES

### 5.2.1. Pruning

- 5.2.1.1. Shrubs and vines shall be pruned to maintain growth within space limitations, to maintain or enhance the natural growth habit, or to eliminate diseased or damaged growth. Some species shall be trimmed appropriately to influence flowering and fruiting, or to improve vigor.
- 5.2.1.2. Shrubs and vines must be trimmed as needed to permit unobstructed passage to residents or vehicles. Trimming near vehicular entry or exits shall be carried out to prevent sight restrictions.
- 5.2.1.3. Shrubs shall be pruned to conform with the design concept of the landscape. Individual shrubs shall not be clipped into balled or boxed forms, except where specifically instructed.
- 5.2.1.4. Vines shall be pruned to control growth and direction, and shall not be allowed to grow over windows, doors or other structural features, unless directed by a representative of Residential. Vines shall not be allowed to grow over the crowns of shrubs or trees.

### 5.2.2. Fertilization

- 5.2.2.1. Most shrubs and vines should be fertilized annually. Plants that have reached maturity may not require annual fertilization.
- 5.2.2.2. All actively growing plants, not yet at maturity, shall be fertilized yearly during the months of February through March. Apply an appropriate slow-release, long lasting complete fertilizer, controlled release fertilizer, or plant tablets at the manufacturer's recommended application rate.
- 5.2.2.3. All plants shall be observed for signs of nutrient deficiencies and treated to correct deficiencies throughout the year. Nutrient deficiency shall be brought to the attention of Residential and properly identified prior to treatment.

## 5.3. GROUND COVERS

### 5.3.1. Trimming

- 5.3.1.1. Established ground covers bordering sidewalks or curbs shall be edged as often as necessary to prevent encroachment.
- 5.3.1.2. Ground covers shall not be allowed to touch or cover the crowns of shrubs and trees.
- 5.3.1.3. Some ground covers may require cutting back to remove woody growth and promote vigor. This shall be performed at the direction of Residential.

### 5.3.2. Fertilization

- 5.3.2.1. Fertilization shall coincide with the growing season of each specific ground cover. One application of a complete fertilizer in the spring, per recommendation from analysis of soil samples, adequate for established ground covers.

5.4. **PINE STRAW**. Beds with trees, shrubs, vines, and ground cover will have pine straw put down two times per year.

## 5.5. TURF AREAS (LAWNS)

#### 5.5.1. Mowing

- 5.5.1.1. Lawns shall be mowed weekly during the growing season and as required during the winter months.
- 5.5.1.2. The height of cutting shall be maintained consistently to prevent scalping or burn. The mowing height shall be appropriate to the turf species.
- 5.5.1.3. Excessive grass clippings shall be spread for mulch or collected and disposed of. Adjacent sidewalks and streets shall be clean of clippings.
- 5.5.1.4. Mowing patterns shall be alternated each week to avoid creating ruts and compaction.

#### 5.5.2. Edging

- 5.5.2.1. All lawn edges along sidewalks and curbs shall be edged before each mowing during the active growing season (March through October) and as required for appearance for the remainder of the year.
- 5.5.2.2. Edging shall be performed with a blade type mechanical edger. The cut edge should appear as a clean, straight line.
- 5.5.2.3. A monofilament line trimmer shall be used to trim around obstacles within the lawn area. Care shall be taken to insure that the bark of trees and shrubs are not damaged or stripped by the line trimmer.
- 5.5.2.4. Lawn sprinkler heads shall only be edged to allow for proper distribution of water.

5.5.3. Fertilization. Fertilizer shall be applied according to recommendations from analysis of soil samples.

#### 5.6. DISEASE AND PEST CONTROL

- 5.6.1. All chemical controls must be applied under the supervision of a licensed and qualified pest control applicator, following the procedures set forth in the labeling of the product, as required by law
- 5.6.2. Healthy plants and lawns should be able to withstand minor disease and insect damage without controls. Routine application of pesticides shall not be practiced, as this destroys natural predator-prey relationships in the environment.
- 5.6.3. Where usually high infestations or infections occur, an accurate identification of the disease or insect shall be made and the control selected with care, prior to application.
- 5.6.4. Residential shall be provided with the labeling for each pesticide used before the product is applied.
- 5.6.5. Gophers armadillos, beavers, and similar pests shall be trapped or controlled with approved baits.

#### 5.7. WEED CONTROL

##### 5.7.1. Pre-Emergent Control

- 5.7.1.1. All areas dressed with decomposed granite or natural ground shall be treated with pre-emergent herbicide twice yearly: in spring between February 15 and March 15, and in fall between October 15 and November 15. The pre-emergent must receive 0.5 inches of rain or be watered in within 10 days of application.
- 5.7.1.2. Areas seeded with wild-flowers shall be identified by the Manger/Owner and shall not be treated with pre-emergent herbicide.

**5.7.2. Post Emergent Control**

- 5.7.2.1. All areas shall be kept free of weeds. Chemical and/or mechanical means may be used as appropriate. If any weeding is not performed, maintenance will be considered unsatisfactory.
- 5.7.2.2. Before applying herbicides, the type of weed shall be identified and the control selected accordingly, using the most effective control for the species, the location and the season.
- 5.7.2.3. Weeds shall not be allowed to grow in paved areas such as driveways, walks, curbs, gutters, etc. Weeds may be removed manually or sprayed with a herbicide. Dead weeds shall be removed from the paved areas.
- 5.7.2.4. Residential shall be provided with the labeling (MSDS) for each herbicide proposed before the product is applied
- 5.7.2.5. Post emergent shall be sprayed at the manufacturer's recommended rates.
- 5.7.2.6. Weeds shall be controlled in turf areas. Mowing is not an acceptable method for weed control

**5.8. DEBRIS REMOVAL**

- 5.8.1. Litter and trash including leaves, rubbish, paper, bottles, cans, rocks, gravel, and other debris shall be removed from the Landscape Area on a weekly basis.
- 5.8.2. All refuse resulting from the maintenance operation of properties shall be disposed of at locations designated by Residential.
- 5.8.3. Hardscape (i.e. sidewalks, patios, driveways) shall be swept or blown free of debris weekly.

**5.9. SURFACES**

- 5.9.1. All areas dressed with decomposed granite shall be raked as needed.
- 5.9.2. All soil shall be regraded as necessary.
- 5.9.3. Paved sidewalks, medians, bike-paths and patio areas shall be swept or blown off with a power blower as needed.

**5.10. IRRIGATION**

- 5.10.1. The irrigation shall be operated at an appropriate seasonal schedule, using the least amount of water necessary to maintain the growth, health, and vigor of all landscape plant materials.
- 5.10.2. Irrigation controllers shall be re-programmed as needed in order to match plant material water needs to the irrigation applied.
- 5.10.3. The Contractor shall maintain a log of current sprinkler station times. A copy of the log shall be given to Residential after routine inspection. The log shall include, but is not limited to:
  - 5.10.3.1. Controller location
  - 5.10.3.2. Scheduled days to run
  - 5.10.3.3. Start times
  - 5.10.3.4. Station location
  - 5.10.3.5. Each station's run time
  - 5.10.3.6. End time
  - 5.10.3.7. Contractor's employee initial and date

- 5.10.4. The Contractor is required to employ the necessary qualified irrigation technician(s) to maintain and repair all irrigation systems on the property. The Contractor shall maintain a reasonable inventory of commonly required repair parts on the service vehicle in order to facilitate prompt irrigation system repairs.
- 5.10.5. Irrigation repairs shall be made with the same brand, make, and model of component where the use of a different part will adversely affect the system efficiency (i.e. sprinkler heads and emitters)
- 5.10.6. When a sufficient amount of rainfall has occurred, the Contractor will turn off the irrigation system until it is necessary to water again. A properly adjusted automatic rain shut off device may be used for this purpose
- 5.10.7. Irrigation and sprinkling will be performed by Contractor, as well as all maintenance of irrigation systems.
- 5.10.8. Repairs to sprinkler equipment damaged by mowers or equipment operated by the Contractor shall be the responsibility of the Contractor, at no cost to the owner. If repair work is not accomplished in a timely manner, Residential may have the work completed and deduct loss from monthly payment.
- 5.10.9. Report and flag all water leaks and/or system malfunctions to Residential.
- 5.11. **REPLANTING AND EXTRA WORK**
  - 5.11.1. Plant material which dies through the fault or neglect of the Contractor or due to preventable circumstances, shall be replaced with a specimen of the same species and of equal or similar size as the plant lost, at no cost to the owner. This must be coordinated with Residential.

## **6. SEASONAL ANNUAL COLOR PLANTINGS**

- 6.1. Seasonal annual color plantings are not included in this agreement.
- 6.2. Seasonal annual color plantings will be installed and maintained upon request of Koonce and subject to agreement of Koonce and Residential on details and charges.

## **7. EXPENSES TO BE PAID BY RESIDENTIAL.** Residential will pay the following expenses directly:

- 7.1. Water for irrigation of the Landscaped Area;
- 7.2. Electricity for irrigation;
- 7.3. Replacement of plant material that dies due to reasons other than the fault or neglect of Contractor or preventable circumstances.

## **8. INSURANCE AND INDEMNIFICATION.** Residential will maintain or cause to be maintained commercial general liability insurance with respect to its activities with a combined single limit of liability of not less than \$3,000,000.00 for bodily injury to or personal injury or death of any person and consequential damages arising from the party's actions and for property damage arising out of any one occurrence, and Koonce will be an additional insured under such policy. All insurance will be procured from a company licensed in the state in which property is located and will be rated by Best's Insurance Reports not less than A-/VIII. Such insurance will provide that it will not be cancelable



without 30 days prior, written notice to additional insureds. Upon request, Residential will provide a certificate via standard ACCORD form to Koonce. Residential will indemnify and hold Koonce harmless from and against any and all loss, cost, damage, liability or expense (including reasonable attorneys' fees actually incurred and court costs) ever incurred by Koonce in connection with the performance by Residential of its obligations under this Agreement, except to the extent caused by the negligence or willful act of Koonce, its employees, tenants, Contractors, agents or licensees.

**9. FAILURE TO PERFORM.**

- 9.1. If Residential fails to comply with the terms of this Agreement, and such failure continues for 30 days following written notice by Koonce, or if the failure reasonably requires more than 30 days to cure and Residential fails to commence cure with 30 days following written notice and to diligently complete the cure, then in addition to all other remedies available at law or in equity, Koonce will have the right to terminate this agreement.
- 9.2. If Koonce fails to comply with the terms of this Agreement, and such failure continues for 30 days following written notice by Residential, or if the failure reasonably requires more than 30 days to cure and Koonce fails to commence cure with 30 days following written notice and to diligently complete the cure, then in addition to all other remedies available at law or in equity, Residential will have the right to terminate this agreement..

10. **TERM.** This Agreement shall continue for 99 years unless terminated as provided herein..

11. **SUCCESSORS.** The rights and obligations of Koonce hereunder run with title to the Commercial Tract and inure to the benefit of and are binding on the successors and assigns of Koonce. If the Commercial Tract is divided into two or more separate tracts, the owner(s) of each tract shall be jointly and severally personally liable for the obligations of Koonce hereunder and each owner may enforce severally the rights of Koonce hereunder; provided however, if at least three-fourths of the present acreage of the Commercial Tract is made subject to a recorded Declaration of Covenants, Conditions, and Restrictions ("Declaration") which is executed by all owners of the acreage and which provides for (1) an incorporated association of owners of all land subject to the Declaration with authority to collect assessments, (2) lien based assessments to fund obligations of the Association, and (3) the obligation of the Association to perform all the obligations of Koonce hereunder, all subject to the approval of Residential, which approval will not be unreasonably withheld, delayed, or conditioned, then upon the recording of the Declaration in the Muscogee County, Georgia Records and organization of the Association, this sentence will not thereafter be applicable.

**12. MISCELLANEOUS.**

- 12.1. **Successors and Assigns.** It is the intention of the parties hereto that the rights and covenants established in this Agreement run with and be appurtenant to the title to the Commercial Tract and be a burden upon the parcels upon which they are imposed and run with the title to each such parcel and bind and benefit the owners of such parcels and their successors, assigns and successors in title.

- 12.2. Severability. If any term, provision, covenant or Agreement contained in this Agreement or the application thereof to any person or circumstance is held to be invalid and illegal or unenforceable, the validity of the remainder of this Agreement or the application of such term, provision, covenant or Agreement to the persons or circumstances other than those to which it is held invalid or unenforceable will not be affected thereby.
- 12.3. Choice of Law. This Agreement will be governed and construed in accordance with laws of the State of Georgia.
- 12.4. Amendment. This Agreement may not be amended, altered or modified except by an Agreement in writing and signed by the owners of the Commercial Tract and Residential
- 12.5. Notices. Notices given pursuant to this Agreement will be effective only if in writing and delivered (i) in person, (ii) by courier, (iii) by reputable overnight courier guaranteeing next business day delivery, (iv) if sent on a business day during the business hours of 9:00 a.m. until 7:00 p.m., eastern time, via facsimile, with a copy to follow by reputable overnight courier guaranteeing next business day delivery, or (v) by United States certified mail, return receipt requested. All notices will be directed to the other party at its address provided below or such other address as either party may designate by notice given in accordance with this Section 9. Notices will be effective (i) in the case of personal delivery or courier delivery, on the date of delivery, (ii) if by overnight courier, 1 business day after deposit with all delivery charges prepaid, (iii) if by facsimile, on the date of transmission, provided that a confirmation sheet is received and a second copy is sent as required above, and (iv) in the case of certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or 5 business days after the date of posting by the United States Post Office. The notice addresses for Koonce and Residential are as follows:

If to Residential:                      Old Town Residential Association, Inc.  
2900 Warm Springs Road  
Columbus, Georgia 31904  
PHONE: (706) 323-6401  
FAX: (706) 571-0340  
ATTN: Genevieve C. Green

If to Koonce:                              Calvin S. Koonce  
2900 Warm Springs Road  
Columbus, Georgia 31904  
PHONE: (706) 323-6401  
FAX: (706) 571-0340  
ATTN: Genevieve C. Green

IN WITNESS WHEREOF, Koonce and Residential have caused this Agreement to be executed under seal by their duly authorized representatives as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

RESIDENTIAL:

Old Town Residential Owners Association, Inc.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Notary Public  
(NOTARY SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signed, sealed and delivered  
in the presence of:

KOONCE:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Notary Public

Calvin S. Koonce

(NOTARY SEAL)

**EXHIBIT "A"**

Description of the Commercial Tract

All those tracts and parcels of land situate, lying and being in the State of Georgia, County of Muscogee and City of Columbus, in Land Lots 269 and 295, 19th District, Muscogee County, Georgia described as follows:

1. "PARCEL SEVEN, 14.324 ACRES" on the "Plat" (herein so called) titled "Revised Lot Combination Survey for Old Town Mixed Use Community", Part of Land Lots 263, 269, 270, 294, and 295" dated December 16, 2013" by Farmer Barley and Associates, recorded December 26, 2013 in Plat Book 164, Page 66, Muscogee County, Georgia Records.
2. The part of the parcel identified as "PARCEL 4, 214.523 ACRES" on the Plat that is in Land Lots 269 and 295, containing 8 acres, more or less.

**EXHIBIT "B"**

Depiction of the Landscape Area