

Clock#: 1600595
FILED FOR RECORD
4/29/2014 11:01am
PAID: 64.00
Daniel W. Massey, Clerk
Superior Court of Chatham County
Chatham County, Georgia

BOOK
395 V 671
PAGE

Cross Reference:
Book 325-J, Page 540
Book 348-A, Page 529
Book 349-B, Page 496

Upon recording, return to:
Brett S. Turner
P.O. Box 10191
Savannah GA 31402
File No. 130051

**AMENDED & RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TOWN PARK POOLER**

THIS AMENDED & RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWN PARK POOLER ("Declaration"), is made this 7th day of October, 2013 by Whitaker Investment Group, LLC, a Georgia limited liability company ("WIG" and "Declarant" hereunder).

BOOK
395 V
PAGE
672

WITNESSETH THAT:

WHEREAS, Town Park/Pooler, LP, a Georgia limited partnership ("TPP"), as a former owner of certain real property in Chatham County Georgia, which real property is described on Exhibit A attached hereto (the "2007 Property"), made the 2007 Property subject to that certain Declaration of Covenants, Conditions and Restrictions for Town Park/Pooler, dated May 1, 2007, and recorded on May 10, 2007, with the Clerk of Superior Court of Chatham County Georgia in Book 325-J, Page 540 ("Original Declaration"); and

WHEREAS, all of the 2007 Property, other than that which was sold as Lots by TPP to third parties, was subsequently acquired through foreclosure by United Community Bank and thereafter sold by United Community Bank to Pooler Properties, LLC, in connection with which United Community Bank assigned the Declarant rights under the Original Declaration to Pooler Properties, LLC; and

WHEREAS, as Declarant pursuant to the assignment of such rights from United Community Bank, Pooler Properties, LLC made and caused to be recorded an Amended & Restated Declaration of Covenants, Conditions and Restrictions For Town Park/Pooler dated January 1, 2009, and recorded on January 30, 2009, with the Clerk of the Superior Court of Chatham County Georgia in Book 348-A, Page 529, and on March 4, 2009, in Book 349-B, Page 496 (the "A&R Declaration"); and

WHEREAS, all of the 2007 Property acquired by Pooler Properties, LLC, other than that which was sold as Lots by Pooler Properties, LLC to third parties, was subsequently acquired through foreclosure by United Community Bank and thereafter sold by United Community Bank to WIG, in connection with which United Community Bank assigned the Declarant rights under the Original Declaration to WIG and the A&R Declaration was extinguished; and

WHEREAS, a portion of the 2007 Property acquired by WIG was subsequently rezoned by the City of Pooler, Georgia (the "Rezoning"), to allow such property to be developed as an apartment community, which property is referred to herein as the "Future Development", and the remainder of such 2007 Property was granted a variance by the City of Pooler, Georgia, to continue to be in the R-4 zoning district, which property is referred to herein as the "Townhome Property"; and

WHEREAS, Town Park Pooler Homeowners Association, Inc., a Georgia non-profit corporation, which was formed by or on behalf of TPP for the purpose of maintaining and administering the 2007 Property pursuant to the Original Declaration, and Town Park Pooler Association, Inc., a Georgia nonprofit corporation, which was formed by or on behalf of Pooler Properties, LLC for the purpose of maintaining and administering the 2007 Property pursuant to the A&R Declaration, have each become inactive and/or were administratively dissolved and are no longer responsible for maintaining and administering the 2007 Property or any portion thereof, including the Property; and

WHEREAS, Declarant has formed Town Park Pooler Homeowners Association II, Inc., a Georgia non-profit corporation (the "Association") for the purpose of maintaining and administering the Property pursuant to this Declaration; and

WHEREAS, the real property made subject to the Original Declaration, as described on Exhibit A to the Original Declaration, referred to certain lots, tracts or parcels described on a certain map or plat recorded in the Public Records (as defined herein) in Plat Book 37-S, Pages 95-A through 95-D, showing a total of 212 lots (the "Recorded Plat"), and the Development Plan, as described in the Original Declaration, provided for construction on the property of various residential buildings containing a total of approximately 212 units, which corresponded to the number of lots depicted on such Recorded Plat; and

WHEREAS, under the Development Plan as set forth in the Original Declaration, the Declarant expressly reserved the right to alter the location or composition of said buildings and the total number of units as shown on the Recorded Plat; and

WHEREAS, as a result of the Rezoning, the real property being made subject to this Declaration shall include the Townhome Property, but shall not include the Future Development; and

WHEREAS, the Original Declaration may be modified (i) by Declarant until such time as Declarant shall have relinquished control of the Association as provided in the Original Declaration, except for a modification concerning termination of the legal status of the development, or (ii) by the affirmative action of seventy-five percent (75%) of the votes of the Association at a meeting called and held in a manner prescribed in the Bylaws or amendments thereof; and

WHEREAS, at a duly called and held meeting on March 21, 2013, at which time WIG owned 190 lots of the 212 lots shown on the Recorded Plat, both the Declarant and the Owners of the Association approved the modification of the Original Declaration, by amending and restating such declaration in its entirety as this Declaration; and

WHEREAS, it is desirable for the efficient preservation, protection and control of the Property to provide certain covenants, conditions and restrictions for the Property, and to delegate and assign to the Association certain powers of maintaining and administering the Property, administering and enforcing such covenants, conditions and restrictions, and collecting and expending for the purposes set forth herein the assessments or other charges hereinafter described; and

WHEREAS, it is in the interest and to the advantage of Declarant and to each Person (as such term is defined herein) who or which shall hereafter acquire title to any portion of the Property that such covenants, conditions and restrictions be imposed upon the Property.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that Declarant does hereby declare that all of the Property (as defined herein) made subject to this Declaration as provided herein shall be held, transferred, sold, conveyed and occupied subject to the easements, restrictions, covenants, charges, liens and affirmative obligations and conditions hereinafter set forth, all of which are for the purpose of protecting the value, desirability and attractiveness of the Property, and which shall run with the title to such Property and be binding on all Persons having or hereafter acquiring any right, title or interest in or to the Property, or any part thereof, and such Persons' respective heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

BOOK
395 V 673
PAGE

ARTICLE I
Definitions

The following capitalized words and terms, when used in this Declaration or any Supplemental Declaration, shall have the following meanings:

“**Affiliate**” shall mean any Person who, with respect to another Person, (i) controls, is controlled by or is under common control with, such other Person, and (ii) if the Person is an individual, is a member of such Person’s immediate family. Control for this purpose shall mean the possession, directly or indirectly, of the power or ability to direct or control the management, decisions or policies of a Person.

“**Architectural Review Committee**” or “**ARC**” shall mean the committee appointed pursuant to Article IV, Section 3 herein; if no such committee has been duly appointed, or if such committee is not accepting submissions for review, the exclusive jurisdiction to approve or disapprove improvements to property and other items, as well as the other rights of an ARC, shall belong to Declarant during the Development Period and to the Board thereafter.

“**Articles of Incorporation**” shall mean the Articles of Incorporation of the Association, as filed with the Secretary of State of the State of Georgia, as amended from time to time.

“**Assessments**” means and includes all Annual Assessments, Special Assessments and Specific Assessments, as set forth in Article III of this Declaration.

“**Association**” shall mean and refer to Town Park Pooler Homeowners Association II, Inc., a Georgia non-profit corporation, its successors and assigns.

“**Board of Directors**” or “**Board**” shall mean the Board of Directors of the Association.

“**Builder**” shall mean any Person (including Declarant or an Affiliate of Declarant), which, as its primary business activity, engages in the construction of homes or other residential dwellings for sale or lease to others, and has acquired any portion of the Property for that purpose.

“**Bylaws**” shall mean the Bylaws of the Association, as amended from time to time.

“**Common Area**” means all real property, including easements, and the improvements thereon, which the Association owns, leases or holds possessory or use rights in for the use, benefit or enjoyment of the Owners, Occupants, and their respective guests and invitees, subject to the Governing Documents, which real property is identified on a Plat or Plats and which may be modified, withdrawn or otherwise altered by subsequent Plats or Supplemental Declarations recorded as a result of changes in the Development Plan. The term shall also include any Limited Common Area. The term shall not include Lots.

“**Common Expenses**” shall mean and refer to all costs and expenses incurred, or reserved in anticipation of being incurred, by the Association in performing its functions and fulfilling its obligations under the Governing Documents.

“**Community**” shall mean the Property made subject to this Declaration, to be known as Town Park Pooler.

“**Community-Wide Standard**” shall mean and refer to the standard of conduct, maintenance, improvements or other activity generally prevailing throughout the Community, as initially established by

DUUK
PAGE
395 V 674

the Declarant and as may be more specifically determined by the Board, which may evolve and change as development progresses under the Development Plan.

“Cost Sharing Agreement” shall mean and refer to any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Community, for the allocation or sharing of expenses that benefit both the Association and the owner or operator of such other property.

“Declarant” shall mean and refer to Whitaker Investment Group, LLC, a Georgia limited liability company, or any Person named by it as its assignee in a document recorded in the Public Records, who shall be entitled to exercise all rights and powers conferred upon Declarant by the Governing Documents.

“Declaration” shall mean this Amended & Restated Declaration of Covenants, Conditions and Restrictions for Town Park Pooler, as amended from time to time.

“Design Guidelines” shall have the meaning set forth in Article IV, Section 4 of this Declaration.

“Development Period” shall mean and refer to the period during which Declarant or an Affiliate of Declarant owns any real property that is or may become subject to this Declaration.

“Development Plan” shall mean the Development Plan for the Property attached hereto as Exhibit B, as amended from time to time.

“Future Development” shall mean and refer to that real property which is identified as “R-3B (Future Development) 13.69 acres” on Exhibit A attached hereto,

“Governing Documents” shall mean this Declaration, the Articles of Incorporation, the Bylaws, the Rules & Regulations, Design Guidelines, Cost Sharing Agreements and Supplemental Declarations, as each may be amended from time to time.

“Limited Common Area” shall mean the front entry walkway, garage driveway and rear ground floor patio for each Unit, and any portion of the Common Area set aside and reserved for the exclusive use and primary benefit of one or more, but less than all Lots or Units in the Community (e.g., a fenced-in area to the rear of a Unit as approved by the ARC).

“Living Area” shall mean the heated area of a Unit calculated from its exterior dimensions, excluding garages, sheds, terraces, decks, screened or open porches, all as defined by the Architectural Review Committee in its sole direction.

“Lot” shall mean and refer to any plot of land designated as such on any Plat of any portion of the Community, excluding any Common Area.

“Member” shall mean and refer to every Person who is a member of the Association.

“Occupant” shall mean any Person occupying for residential purposes all or any portion of a Unit for any period of time, regardless of whether or not such Person is a tenant or the Owner of such property.

“Owner” shall mean and refer to the record title owner, whether it is one or more Persons, of fee simple title to any Lot or Unit, but excluding those having an interest merely as security for the performance of an obligation. If a Lot or Unit is owned by more than one Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

395 V 675
BOOK PAGE

"Person" shall mean a natural person, corporation, limited liability company, partnership, association, trust or other legal entity.

"Plat" or "Plats" shall collectively mean the subdivision plat(s) of the Property made subject to this Declaration, or portions thereof recorded from time to time in the Public Records.

"Prime Rate" shall mean and refer to the prime rate as published in the *Wall Street Journal*, in hard copy or digitally on the Internet, or, if a prime rate is no longer published in the *Wall Street Journal*, to the mean average of prime rates offered by the three largest banks, measured by total deposits, located in Savannah Georgia.

"Property" shall mean and refer to that real property identified as "R-4 (Townhome Property) 12.13 acres" on Exhibit A attached hereto, and any additional real property made subject to this Declaration by amended or supplemental declaration to reflect any additions or withdrawal of real property to or from this Declaration.

"Public Records" shall mean and refer to such records recorded from time to time and maintained by the Clerk of the Superior Court of Chatham County Georgia.

"Rules & Regulations" shall have the meaning set forth in Article V, Section 25.

"Single-Family" shall mean and refer to one or more individuals, each related to the other by blood, marriage or adoption, or a group of not more than three (3) individuals not all so related, maintaining a common household.

"Structure" shall mean anything erected, constructed or located in or upon any Lot, including, without limitation, Townhomes and other multi-family dwellings, either temporarily or permanently.

"Supplemental Declaration" shall mean an instrument recorded pursuant to Article IX, which subjects additional real property to, or removes real property from, this Declaration, and/or imposes additional restrictions or obligations, or modifies existing restrictions or obligations, on real property described in such instrument.

"Townhome" shall mean such portion of any building located on a Lot, which may be independently owned and conveyed in fee simple and which is intended for use and occupancy by an Owner or tenant as an attached or detached residence.

"Townhome Property" shall mean and refer to that real property identified as "R-4 (Townhome Property) 12.13 acres" on Exhibit A attached hereto.

"Transfer Fee" shall have the meaning set forth in Article III, Section 12 of this Declaration.

"Unit" shall mean a completed fee simple Townhome or other separate residential dwelling that is part of a multi-family dwelling constructed on a Lot that is subject to Assessments, ownership of which shall include garaged parking (if any) upon the Lot, together with the right of ingress and egress upon the driveways and parking areas appurtenant thereto.

"Voting Member" shall mean and refer to the Declarant as well as the other Owners, as set forth in Article II, Section 2 of this Declaration.

395
V
676
DUUM
PAGE

ARTICLE II
Rights to Common Area; Members and Voting Rights; Development Plan

Section 1. Rights of Enjoyment of Common Area; Membership; Voting Rights. Each Owner and Occupant shall have a right and nonexclusive easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with title to the Owner's Lot or Unit. Each such Owner and Occupant is bound by the terms and conditions of the Governing Documents and each such Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot or Unit. No Owner, whether one or more Persons, shall have more than one membership per Lot or Unit. Ownership of a Lot or Unit shall be the sole qualification for membership in the Association, and each Owner shall remain a Member until such time as such ownership ceases for any reason, at which time such membership in the Association shall automatically cease. The provisions of this Section shall not affect or limit the voting rights of the Declarant as established by Section 2 below.

Section 2. Voting Rights. The Association shall have two (2) classes of Voting Members:

(a) Class A. Class A Members shall be all Owners with the exception of the Declarant until such time as the Class B Membership terminates and is converted to a Class A Membership, or unless Declarant elects to vote as a Class A Member as set forth in subsection (b) below. Each Owner shall be entitled to one (1) vote for each Lot or each Unit owned. If more than one Person owns an interest in a Lot or Unit, all such Persons shall jointly designate in writing to the Secretary of the Association one (1) individual who shall be the Voting Member for the Lot or Unit and who shall be the only one (1) of such Persons allowed to cast one (1) vote with respect to the Lot or Unit. Failure to so designate an individual to cast a vote for a Lot or Unit shall disqualify such Owners from casting any vote for such Lot or Unit.

(b) Class B. The Class B Member shall be the Declarant, and any duly designated assignee of Declarant. The Class B Member shall be a Voting Member of the Association and shall be entitled to cast the number of votes which are contained in the total of all Class A Members, plus one (1) vote, until such time as the Class B Membership terminates and is converted to Class A Membership (such period of time being referred to herein as the "Class B Control Period"). Notwithstanding the foregoing, during the Class B Control Period, and without terminating such Class B Control Period or otherwise waiving, relinquishing or limiting any of its rights as Declarant or the Class B Member (including its voting rights described in the preceding sentence), Declarant may vote on any matter (e.g., a Special Assessment) as a Class A Member based on the number of Lots or Units owned by Declarant. The Class B Control Period shall end upon the happening of the earlier of the following:

- (i) When the Declarant or an Affiliate of Declarant shall have title to less than two (2) Lots and to less than one (1) acre of the Property;
- (ii) Twenty (20) years from the date this Declaration is recorded in the Public Records;
or
- (iii) At any time as determined by Declarant in its sole and absolute discretion.

From and after the happening of the earlier of these events the Class B Member shall be deemed to be a Class A Member and entitled to one (1) vote for each Lot or Unit owned. At such time, the Declarant shall call a meeting, as provided in the By-Laws for special meetings, to advise the membership of the termination of Class B Membership.

(c) Voting Members. Only Voting Members who are not delinquent on all Assessments due the Association hereunder shall be entitled to attend meetings of the Association and cast votes on matters pertaining to the Association as to which a Member has a right to vote under the Governing Documents.

Section 3. Development Plan. The Property is planned to be developed according to the Development Plan.

ARTICLE III
Covenants For Assessments

Section 1. Creation of Assessments; Declarant's Obligation for Assessments; Builder Exemption. There are hereby created assessments for Association expenses as the Board may authorize from time to time. There shall be three (3) types of assessments: (a) Annual Assessments as described in Section 3 below to fund Common Expenses for the general benefit of all Lots and Units; (b) Special Assessments as described in Section 5 below; and (c) Specific Assessments as described in Section 6 below. During the Class B Control Period, the Declarant may annually elect to pay either (i) an amount equal to the assessments on its unsold Lots and Units, or (ii) the difference between the amount levied on all other Lots and Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year to which the assessments applied. Unless the Declarant notifies the Board in writing prior to the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligation hereunder may be satisfied in the form of cash or by in-kind contributions of services or materials, or by a combination of these. The Annual Assessments and Special Assessments shall not apply to any Lots or Units owned by a Builder; provided, however, that if any such Lot or Unit is leased, rented or occupied for residential purposes, such Builder shall then be subject to all such Assessments on such Lot or Unit from the date that the Lot or Unit is so leased, rented or occupied until it is sold to a third party purchaser that is not exempt from Annual Assessments and Special Assessments.

Section 2. Creation of Lien and Personal Obligation of Assessments. Subject to the exemptions in Section 1 above, each Owner of any Lot or Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree, for themselves, their heirs, representatives, successors and assigns, to pay Annual Assessments, Special Assessments and Specific Assessments. All Assessments shall be fixed, established and collected as hereinafter provided and all Assessments, together with interest, late fees, costs and attorney's fees, shall be a charge and lien upon the Lot or Unit against which such Assessment is made. Such lien may be enforced and foreclosed by the Association in any manner permitted by the laws of the State of Georgia. Each such Assessment, together with interest, costs and attorney's fees incurred by or on behalf of the Association, shall also be the personal obligation of the Owner(s) of the Lot or Unit at the time when the Assessment fell due. The personal obligation of an Owner for delinquent Assessments shall pass to such Owner's successors in title or interest, and both parties (e.g., seller and purchaser) shall be jointly and severally liable therefor.

Section 3. Annual Assessments. The Annual Assessments shall be levied by the Association and used exclusively for Common Expenses. This will include, without limitation, expenses for each of the following:

- (a) The operation, maintenance and repair of Common Areas and improvements to Common Areas, which could include, without limitation, such things as roads, walls, facilities, parks, ponds and open space.
- (b) The maintenance and repair of any sign or signs located within the Common Area.

BOOK PAGE
395 V 678

DUVN PAGE
395 V 679

- (c) The operation and maintenance of, and payment of all utility bills for (i) street lighting within the Property and all Association-owned roads or trails within the Property; (ii) lighting at the entrances to the Property; and (iii) lighting of any easements, clubhouse and other Common Area or buffers within the Property.
- (d) Landscaping (including, but not limited to grass cuttings) (i) at the entrances to the Property, and (ii) on all roads, easements, Common Area and buffers within the Property.
- (e) The operation, repair and maintenance of irrigation systems at the entrances to the Property or in any Common Area, easements or buffers within the Property, and the payment of all utility bills for the operation of such irrigation systems.
- (f) The payment of all taxes of any nature due from the Association.
- (g) The payment of all management fees due for the management of the Association.
- (h) The payment of premiums for any general liability insurance, property insurance, directors and officers liability insurance or other insurance obtained by the Association.
- (i) The payment of expenses related to the ownership, maintenance or use of the Common Area that are determined by the Board to provide a benefit to the Members.
- (j) The payment of all operating expenses of the Association, including, but not limited to postage expense, office supplies, accounting fees, legal fees, office staff, office equipment and rent.

Section 4. Amount and Payment of Annual Assessment. The Annual Assessment for each Lot or Unit, unless exempt, shall be payable either (i) annually, in advance, on or before the first day of each fiscal year of the Association, or (ii) in quarterly, monthly or other periodic installments according to a schedule and such payment procedures as may be approved by the Board from time to time. The amount of the Annual Assessments shall be determined as follows:

- (a) The Annual Assessment for the calendar year beginning on January 1, 2012, shall be \$600.00 per Unit. Beginning on January 1, 2014, the Annual Assessment shall be \$1,080, payable in monthly installments of \$90.00 per month.
- (b) The Annual Assessment for each calendar year beginning after December 31, 2012, shall be established by the Board of Directors based on annual operating and capital budgets prepared by or at the direction of the Board, and approved by the Board, and shall be set at a level reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves for the repair or replacement of replaceable assets of the Association and for the repair or replacement of items to be maintained by the Association pursuant to Article V, Section 18, taking into account the number of Lots and Units subject to assessment.
- (c) When the Board of Directors fixes the Annual Assessment for each calendar year, the Board of Directors shall at the same time and in connection therewith, prepare, or cause to be prepared, a notice of such Annual Assessment and distribute a copy thereof, together with a copy of the applicable budget, to each Member.

(d) During the Class B Control Period, the Declarant may, but shall not be obligated to, reduce the Annual Assessment for any year by payment of a subsidy and/or contributions of services and materials to the Association, which may be treated as either a contribution or advance against future Assessments due from the Declarant, or a loan with interest accruing at an annual rate of the Prime Rate plus 2%, subject to a floor of six percent (6%) per annum, in the Declarant's discretion. Any such anticipated payment, contribution or loan by the Declarant shall be conspicuously disclosed as a line item in the budget for such Annual Assessment. Such payments, contributions or loans by the Declarant in any year shall under no circumstances obligate Declarant to continue such payments, contributions or loans in future years.

BOOK
395 V 680
PAGE

Section 5. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement or debt reduction of a capital improvement upon the Common Area or the repair or replacement of any items to be maintained by the Association pursuant to Article V, Section 18 of this Declaration, including fixtures and personal property related thereto, provided that any such Assessment shall require the approval of two-thirds (2/3) of the Class A votes at a meeting duly called for such purpose. Special Assessments may be collected on either an annual, quarterly, or monthly basis and according to payment procedures as determined by the Board of Directors from time to time.

Section 6. Specific Assessments. The Association is also authorized to levy Specific Assessments against a particular Lot or Lots or Unit or Units as follows: (a) to cover costs, including administrative and overhead costs, of providing benefits, items or services to such Lot(s), Unit(s) or their Occupants upon request of the Owner(s), which Assessments may be levied in advance on the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner(s); (b) to cover the costs associated with maintenance, repair, replacement and insurance of any Limited Common Area assigned to one or more Lots or Units; and (c) to cover costs incurred in bringing the Lot(s) or Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupant of the Lot or Unit, their agents, contractors, licenses, invitees or guests; provided, however, that the Board shall give the Lot or Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (c).

Section 7. Notice and Quorum for Any Action Authorized Under Sections 4 or 5 Above. Written notice of any meeting of the Association called by the Board for the purpose of taking any action under Section 4 or 5 above that requires the approval of Members shall be sent to all Voting Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence at the meeting of Voting Members, or of proxies, entitled to cast ten percent (10%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the day set for the preceding meeting.

Section 8. Uniform Rate of Assessments. Annual and Special Assessments shall be fixed at a uniform rate for all Lots and Units subject to such Assessments.

Section 9. Date of Commencement of Assessments; Due Dates; Certificate; Failure to Assess.

(a) All Assessments provided for herein shall commence as to any Lot or Unit, unless exempt pursuant to Section 1 above, upon the conveyance of the Lot or Unit to an Owner. The amount of Annual Assessments due upon the conveyance of a Lot or Unit shall be computed

according to the number of days remaining in the calendar year or other period as may be applicable to such Annual Assessment.

(b) At least (30) days in advance of the due date of each Assessment, the Board of Directors shall fix the amount and due date or dates (where installment or periodic payments have been authorized by the Board) of the Assessment and give each Owner subject thereto written notice thereof and of the applicable procedures for payment.

(c) The Association, upon request and payment of a reasonable service fee established from time to time by the Board, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments due on a specified Lot or Unit have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot or Unit shall be binding upon the Association as of and through the date of its issuance.

(d) Failure of the Association to establish an Assessment amount or to deliver to each Owner an Assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay such Assessment. In such event, the Owner shall continue to pay Annual Assessments on the same basis as during the last year for which the Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

Section 10. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within ten (10) days after its due date shall be subject to a late payment fee as established by the Board from time to time in its reasonable discretion, and shall bear interest from the due date at such rate as may be established by the Board in its reasonable discretion from time to time (provided, however, that such rate shall not exceed the maximum rate allowed by applicable law). Such Assessment, late fees and interest together with the costs of collection thereof including actual attorney's fees and costs as provided hereinafter, shall thereupon become a continuing lien upon the Lot or Unit against which such Assessment was made, and shall bind such Lot or Unit and its Owner, heirs, devisees, personal representatives and assigns. The Association may bring an action at law against the Person obligated to pay the same, or foreclose the lien against the Lot or Unit in like manner as a deed to secure debt and, in either event, interest, costs, late fees, and reasonable attorney's fees and costs incurred by the Association shall be added to the amount of such Assessment. Upon exercise of its right to foreclose, the Association may elect to declare the entire remaining amount of all Assessments of the Owner of the foreclosed Lot or Unit due and payable and collect the same as provided above. In the event of any such foreclosure, the Owner shall be required to pay to the Association reasonable rental for the Lot or Unit after commencement of the foreclosure action and the Association shall be entitled to the appointment of a receiver to collect the same. No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use or partial use of the Common Area or abandonment of such Owner's Lot or Unit.

Section 11. Subordination of Lien to Deed to Secure Debt. The lien of the Assessments provided for herein shall be subordinate to the lien of any first deed to secure debt conveying the Lot or Unit subject to Assessments, and the lien of any *ad valorem* taxes on the Lot or Unit. Sale or transfer of a Lot or Unit shall not affect the Assessments lien thereon. However, the sale or transfer of a Lot or Unit pursuant to a foreclosure, or any proceeding in lieu of foreclosure, shall extinguish the lien for such Assessments that became due prior to such sale or transfer. No such sale or transfer shall release such Lot or Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 12. Set-Up Fee, Transfer Fee and Collection of Assessments Upon Conveyance of Lot or Unit. Excluding the first sale of each Lot or Unit from the Declarant and the first sale of each Lot or Unit from a

BOOK
PAGE
395 V 681

Builder to another Owner, a Set-Up Fee, Transfer Fee and the following Assessments shall be assessed and paid to the Association from the purchaser of each Lot or Unit:

- (a) A set-up fee in the amount of Fifty Dollars (\$50.00) per Lot or Unit ("Set-up Fee"), for which the Association will provide the Owner with a key card, bar codes or similar items or information to allow access to and use of the Community and the Association's recreational and other facilities;
- (b) A transfer fee equal to One-half of One Percent (.5%) of the gross sales price of such Lot or Unit ("Transfer Fee"), which fee may be used by the Association in its sole discretion to fund its operations and/or reserves; and closing occurs.

Section 13. Borrowing Money. The Association shall have the right to borrow money in such amounts, for such Association purposes and on such terms as determined by the Board of Directors in its reasonable discretion.

ARTICLE IV
Architectural Control

Section 1. Purpose. It is the Declarant's purpose to minimize destruction or diminution of the natural environment in the Community and to preserve as much as is practicable the visual continuity of the Property; and to assure that the improvements and Structures on the Property will be of good and attractive materials, workmanship and design, and in harmony with the natural setting of the area and serve to preserve and enhance the beauty thereof.

Section 2. Approval Required. No building, wall, walkway, sign, sign post, driveway, fence, mailbox, screening device, swimming pool, or other Structure shall be commenced, erected, altered, modified or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made, nor shall the clearing of any trees or change of property grade be made, unless and until approved by the ARC, and no change shall be made in exterior color, stain or painting of any Structure or door thereof, balcony or deck thereunto attached, unless so approved. This prohibition shall not apply to Declarant during the Development Period.

Section 3. Architectural Review Committee. An Architectural Review Committee, which shall consist of at least two (2) and not more than five (5) persons, may be appointed by the Declarant at any time during the Development Period and by the Board of Directors thereafter, and shall have exclusive jurisdiction to approve or disapprove all improvements and other items referred to in Section 2 above. If an even number of persons are appointed to the ARC, one of such persons shall be designated the Chair of the ARC by the Declarant or Board, as applicable, with the authority to make a decision of the ARC in the event of a deadlock in deciding to approve or disapprove a matter subject to its jurisdiction. If no such committee has been appointed by Declarant during the Development Period or by the Board thereafter, or if it is not accepting submissions for review, the exclusive jurisdiction to approve or disapprove such improvements and other items, as well as all other rights of an ARC, shall belong to the Declarant during the Development Period and to the Board thereafter.

Section 4. Design Guidelines. The ARC may, but is not required to, adopt Design Guidelines governing the submission, review and approval of plans for the construction or alteration of all improvements, including Structures, landscaping and hardscape ("Design Guidelines"). During the Development Period the Declarant, and thereafter the Board of Directors, shall have sole and full authority to prepare and amend the Design Guidelines.

BOOK
PAGE
395 V 682

Section 5. Liability. Provided that a member or members of the ARC, the Declarant or the Board or a member or members thereof, as the case may be, has or have acted in good faith on the basis of information submitted to them, neither Declarant, Association, the Board, the ARC nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of approval or disapproval of any plans, drawings and specifications, whether or not the improvements are defective. Further, neither Declarant, the Association, the Board, the ARC nor any member thereof shall be liable to any Owner for the construction or performance of any work on any Lot or Unit, whether or not pursuant to approved plans, drawings and specifications, or the development of any property within the Property, or any negligence or breach of contract by a Builder or other Person carrying out construction within the Property.

Section 6. Procedures. The requirements for submittals to the ARC, including applicable review fees, shall be set forth in the Design Guidelines. In the event the ARC has not adopted Design Guidelines, such requirements and review fees shall be established by Declarant during the Development Period and by the Board thereafter. Plans and specifications required to be submitted shall be deemed to have not been received if they are incomplete, contain erroneous data, fail to present accurate and complete information upon which the ARC or other reviewer may be expected to base its decision, or if the applicable review fee has not been paid.

Section 7. Right to Inspect. The ARC shall have the right, in its discretion, to enter upon any Lot or Unit before or during clearing or construction, erection or installation of improvements or alterations, to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications. Notwithstanding this right of inspection, neither the ARC, Association, Declarant or Board, nor any of their respective members, shall have any liability or responsibility for the means and methods of any such construction, or for any defects in such construction. The ARC shall have the power to order the dismantling or cessation of work it deems nonconforming in its sole opinion, and to enforce such order by any legal or equitable proceedings, including but not limited to, a proceeding seeking a temporary restraining order or other injunctive relief.

ARTICLE V
Use Restrictions

Section 1. Residential Use. Units shall only be used for private, Single Family residential purposes. No Structure shall be erected, re-erected or maintained on a Lot, except one Townhome or other Single Family residential dwelling that is part of a multi-family dwelling, together with such accessory buildings as may be approved by the ARC in its sole discretion. Notwithstanding the foregoing, Declarant may use or permit the use of one or more Units as model homes or model apartments or as development, Builder, sales or rental offices.

Section 2. Unit Size. All Units constructed on any Lot shall have a Living Area of at least six hundred (600) square feet.

Section 3. [Intentionally left blank.]

Section 4. Construction Quality. All improvements to Lots or Units shall be of a quality of design, workmanship and materials that is generally compatible and harmonious with the natural setting of the area, the Community-Wide Standard and with other Units within the Community as determined by Declarant during the Development Period in its sole discretion and thereafter by the ARC, and shall be constructed in accordance with applicable governmental codes and the Design Guidelines (if any).

BOOK PAGE
395 V 683

Section 5. Nuisances. No noxious or offensive activity shall be carried on within the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to Owners. No unlawful use shall be made of any portion of the Property, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction shall be observed. Nothing shall be kept and no activity shall be carried on any Lot, Unit or Structure that will increase the rate of insurance applicable to other Lots, Units or Structures on the Property. In the event of a dispute as to whether an activity is in violation of this Section, the determination by the Board of Directors shall be controlling. Garbage containers shall not be placed in Common Areas, except in areas designated for such purpose by the Association, and such containers shall be kept either in the Owner's garage or patio or other screened area so that they are not visible from the street except on the day designated for pickup. This Section shall not apply to construction activities undertaken by Declarant or Builders.

395
V
684
BUOK
PAGE

Section 6. Home Occupations. No home occupation, business, trade or profession of any kind shall be conducted, maintained or permitted in any Lot or Unit except as ancillary to the primary use of a Lot or Unit as a Single-Family residence. A business, trade or professional use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the Lot or Unit; (b) the activity conforms to all zoning requirements for the Property; (c) the activity does not involve visitation of the Lot or Unit by clients, customers or suppliers, or door-to-door solicitation of other Owners; (d) the activity does not increase traffic or include frequent deliveries to or from the Lot or Unit; and (e) the activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of residents of other Lots or Units, all as determined in the sole discretion of the Board. Notwithstanding anything herein to the contrary, a Builder, Declarant, or its Affiliates or assigns, shall have the right to use any Lot or Unit for a business, sales or leasing office or for model home or apartment purposes.

Section 7. Temporary Structures. No temporary structure including, but not limited to tents, shacks and mobile homes shall be placed on any Lot at any time; provided, however that this prohibition shall not apply to Declarant or its Affiliates, or to Builders in compliance with construction guidelines adopted by the Board. In the event of a dispute as to whether a Structure is a "temporary structure" as used herein, the determination by the Board of Directors shall be controlling.

Section 8. Animals and Pets. No animals, livestock or poultry of any kind shall be maintained on or within a Lot or Unit, except that not more than three (3) household pets (including no more than two (2) dogs, neither of which may exceed 75 pounds in weight) may be kept or maintained on or within a Lot or Unit, provided that such animals or pets are not kept, bred, or maintained for a commercial purpose and, provided further, that they shall not, in the sole discretion of the Board of Directors, constitute a nuisance, be found to be aggressive toward people or other domestic animals, or cause unsanitary conditions, and are otherwise maintained according to applicable Rules & Regulations. Neither the Association nor the Board shall have any responsibility for any injury, loss or damage to persons, other animals or property, as the case may be, caused by or resulting from the presence of any such animals or pets in the Community, and the Owner(s) of Lots or Units where such animals or pets are kept or maintained shall defend and hold harmless the Association, its Board and officers from any and all liabilities, claims, injuries, loss or damage to persons, other animals or property caused by or resulting from the maintenance of such animals or pets in the Community.

Section 9. Re-subdivision. No Lot shall be re-subdivided, combined with another Lot, or reduced in size without the prior written consent of the Declarant during the Development Period, or the ARC thereafter; provided, however that this prohibition shall not apply to Declarant.

Section 10. Outside Antennae. Except as otherwise allowed by applicable rules and regulations of the Federal Communications Commission, no outside radio, television or other electronic or

telecommunication device antenna, dish or disc or similar item (each an "Antenna") shall be installed or erected by any Owner (i) in any Common Area, or (ii) on a Lot or Unit without the prior written approval of the ARC.

Section 11. Clotheslines. No clotheslines or other devices designed for drying clothes outside of a Unit shall be permitted within the Property.

Section 12. Parking. All vehicles, including but not limited to, automobiles, trucks and motorcycles, must be parked in garages, on the driveway area of a Unit or in a parking space on Common Area designated by the Association for guest parking, pursuant to applicable Rules & Regulations. No disabled or unlicensed vehicles may be parked within the Property for more than five (5) days in total, irrespective of whether or not such days are consecutive or non-consecutive. No vehicle shall be parked in streets, right-of-ways or Common Areas within the Property other than in such areas and during such times as may be specifically designated for parking by the Association. Unless the Association has expressly approved and designated an area for such purpose, no commercial vehicles, trailers, campers, recreational vehicles, motor homes, boats, disabled vehicles or vehicles under repair may be placed on the Property. This prohibition shall not apply to the temporary parking of vehicles used in connection with imminent or ongoing construction activity or to service vehicles used for maintenance purposes or temporary parking of vehicles for loading and unloading purposes.

Section 13. Boats and Recreational Vehicles. No commercial vehicles, buses, trailers, camping trailers, motor homes, recreational vehicles or boats, (collectively "Recreational Vehicles") may be maintained or parked within the Property without a conditional parking permit from the Association. The Board of Directors shall have the authority, in its sole discretion, to establish the standards and fees for the issuance of such permits and the authority to order the removal of any Recreational Vehicle maintained or parked in violation of this Section or the terms of a conditional parking permit. The cost of such removal shall be paid by such Owner of the Lot or Unit who owned the removed Recreational Vehicle or allowed the owner of such vehicle to be maintained or parked within the Property. In the event of a dispute as to whether a device is a Recreational Vehicle as used herein, the determination as such by the Board of Directors shall be controlling.

Section 14. Mailboxes. No mailboxes or receptacles for the delivery of newspapers or mail shall be allowed on a Lot, Unit or other Structure, other than those placed on Structures owned and maintained by the Association for such purpose. Nothing shall be affixed or attached to any mailbox or receptacle for the delivery of newspapers or mail, nor shall the color or appearance or any mailbox or such receptacle be changed, except by the Association.

Section 15. Signs.

- (a) No signs shall be displayed upon the Property other than: (i) a sign identifying the name of the Builder, lender or architect during construction of a Unit; provided said sign does not exceed six (6) square feet in area; or (ii) one (1) professionally made sign identifying a Lot Unit "For Sale" or "For Lease" and does not exceed four (4) square feet in area; all as approved by the ARC in its sole discretion.
- (b) No other signs, including but not limited to directional signs, shall be placed anywhere within the Property, including but not limited to rights-of-ways unless approved by Declarant or the ARC in their sole discretion.
- (c) The provisions of this Section shall not apply to Declarant or to the Association with respect to Common Areas.

BOOK
395 V
PAGE
685

Section 16. Drainage Ditches. No change shall be made in the level or courses or condition of any drainage ditch or swale in the Property without the prior written approval of the Declarant and the Board of Directors.

Section 17. Setback. All Units erected on a Lot must be situated within the front, rear and side setback lines shown on the Plat and within a building envelope as determined by the ARC under the Design Guidelines, if applicable.

Section 18. Maintenance, Repair and Replacement; Community-Wide Standard. In addition to the maintenance of the Common Areas, the Association shall provide exterior maintenance, repair and replacement upon each Unit and Townhome as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, landscaping, walks and other exterior improvements. Such exterior maintenance shall not include front entry walkways, driveways, parking pads, ground floor patios, decks, balconies, screens, doors, glass surfaces, or trees, shrubs, grass or landscaping, including landscaping within enclosed patio or deck areas, as to which each Owner shall be responsible for the maintenance. If, in the sole opinion of the Board of Directors, an Owner fails to maintain such portions of a Unit that is the responsibility of the Owner in a clean, neat and orderly manner or which otherwise fails to meet the Community-Wide Standard, the Association may provide such maintenance as it deems necessary, and the costs thereof shall be a Specific Assessment against such Unit.

Section 19. Fuel Tanks. No fuel tanks or similar storage receptacle may be exposed to view on a Lot. Fuel tanks or similar storage receptacles may be installed only within a Structure, within a screened area or buried underground, as approved by the ARC in its discretion. This provision shall not apply during construction of a Unit or other improvements to the Property by Declarant or the Association.

Section 20. Driveways and Walkways. Driveways and walkways can only be constructed on Lots at locations and using such materials as are approved by the ARC.

Section 21. Firearms, Archery, Hunting.

- (a) No firearms, including but not limited to rifles, shotguns, pistols, pellet guns or BB guns shall be discharged within the Property;
- (b) No archery equipment shall be shot or used within the Property;
- (c) No fishing and no hunting or shooting of birds, squirrels or other animals shall be permitted within the Property.

Section 22. Common Area Dedication.

- (a) By its execution and recording of this Declaration or a Supplemental Declaration, Declarant shall dedicate the Common Area for the use and enjoyment of the Owners and Occupants.
- (b) Use of the Common Area shall be limited to the Owners, Occupants, their guests and invitees.
- (c) No planting or gardening shall be done and no fences, hedges or walls shall be erected or maintained within the Common Areas except as approved by the Association or Declarant in their sole discretion, or except as constructed by Declarant. No sidewalks, doorsteps, entrances and

passageways shall be obstructed, encumbered or used other than for ingress or egress to or from Lots or Units.

Section 23. Fences; Swimming Pools.

(a) Unless constructed by Declarant, no fence, wall, or other barrier shall be constructed upon any Lot without the prior approval of the ARC as provided in Article IV hereof, and of the Declarant during the Development Period. Any portion of Common Area that is enclosed or otherwise delineated by a fence, wall or other barrier that is approved for construction by the ARC and Declarant if during the Development Period, shall be a Limited Common Area for the applicable Unit or Lot, shall be required to be maintained, repaired and replaced by the Owner of such Unit or Lot and shall be subject to Specific Assessment is not properly maintained, repaired or replaced by such Owner.

(b) No swimming pools shall be constructed on any Lot, other than as may be constructed by Declarant during the Development Period. Neither of the Declarant, ARC nor the Association assumes any liability for personal injury, including death, or loss of property arising or resulting from any swimming pool or water feature within the Property.

Section 24. Exterior Decorations; Lighting. Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on outside walls, doors, patios, decks or balconies of any portion of the Property, including the Lots and Units, and all interior window treatments that are visible from outside the Unit shall be of white, beige, off-white or opaque coloring. Bedding sheets, plastic sheets or other non-conventional window treatments shall not be used to cover windows. No exterior lighting shall be directed outside the boundaries of a Lot except for required street lighting and parking lot lighting.

Section 25. Rules & Regulations. In addition to the use restrictions set forth in this Article or elsewhere in this Declaration, the Board may, from time to time and without the consent of Members, adopt, modify or delete rules and regulations applicable to the Community ("Rules & Regulations"). Such Rules & Regulations shall be distributed or made available (e.g., by email, on an Internet website or by similar means) to Owners prior to the date they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless modified by Declarant during the Development Period, or thereafter by the Board.

ARTICLE VI

Rights and Easements Granted and Reserved by Declarant

Section 1. Reservation of Easements. In addition to all other easements reserved in this Declaration or shown or reserved on any Plat, Declarant is hereby granted and reserves to itself, as the case may be, and its designated successors and assigns, a perpetual, alienable and releasable easement across and within an area seven and one-half (7.5) feet wide inside all the boundaries of each Lot for the installation, construction, renewing, operation and maintenance of improvements, utilities and drainage facilities, including installation under the ground, as well as upon and above ground, for the purpose of serving the Property with water, telephone, electricity, sewer, cable television, and other utility or telecommunication services. Within these easements, no Structures, planting or other materials may be placed or permitted to remain which may interfere with the installation and maintenance of utilities or other improvements for which the easements were intended, or which may, in the sole discretion of the Declarant, change the direction of flow of drainage ditches and easements, or which may obstruct or retard the flow of water through drainage ditches, swales and easements.

BOOK
395 V
PAGE
687

Section 2: Drainage Flow. Drainage flow shall not be obstructed or diverted from drainage easements. The Declarant or the Association may, but shall not be required to, cut drainways for surface water wherever and whenever such action shall appear to either of them to be necessary to maintain reasonable standards of health, safety and appearance of the Property and surrounding properties. These easements include the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other reasonable action necessary to install utilities and to maintain reasonable standards of health and appearance but shall not include the right to disturb any permanent improvements erected upon a Lot, which are not located within the specific easement area designated on the Plat or in this Declaration. Except as provided herein, existing drainage shall not be altered so as to divert the flow of water onto an adjacent Lot or into sanitary sewer lines.

Section 3. Telecommunications Easements. Without limiting the generality of Section 1 above, Declarant during the Class B Control Period and the Association thereafter, each are granted and reserve the right to grant and assign (i) utility easements over, under and through roads and rights-of-way and Common Areas, and over, under and through a perimeter area within the Lot boundaries, and (ii) separate, private telecommunications easements consisting of a blanket, master infrastructure easement over, under and through the entire Community, perimeter easements over, under and through the entire Community, the perimeter of the Common Areas, and in each case for use by the grantee of such easements and service providers to install, operate, maintain and replace telecommunications infrastructure and to provide telecommunications and similar services to Owners and Occupants and residents of other properties in the general area of the Community. All public roads and rights of way in the Community shall be granted subject to such private telecommunications easements.

Section 4. Other Easements.

- (a) Declarant hereby reserves, creates and establishes the following non-exclusive, perpetual, reciprocal and appurtenant easements for itself, the Association, Members and Owners: (i) an easement of encroachment, and for maintenance of any permitted encroachment, between adjacent Lots, Units and Common Area, as applicable, due to the unintentional placement or settling or shifting of the improvements constructed thereon, to a distance of not more than three (3) feet as measured from the common boundary between such adjacent Lots, Units and/or Common Area; (ii) easements over, across, under, through and upon each Lot for the purposes of controlling soil erosion, drainage of natural or man-made water areas from any portion of the Community, including Common Areas, changing modifying or altering the natural flow of water on or adjacent to any Lot or Common Area, dredging and maintaining water areas within the Community, and installing and maintaining pipes, lines and conduits in the exercise of the foregoing easement rights.
- (b) Declarant hereby reserves, creates and establishes a non-exclusive, perpetual easement for the Association to enter all portions of the Community, including each Lot and Unit (i) in the case of emergency, (ii) to perform maintenance responsibilities under the Declaration, and (iii) to make inspections to ensure compliance with the Governing Documents.
- (c) Declarant hereby reserves, creates and establishes non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area and every Lot, and any improvement which contributes to the lateral support of another portion of the Common Area or a Lot shall be burdened with an easement for lateral support, and also shall have a right to lateral support which shall be appurtenant to and pass with title to such property.
- (d) Declaration hereby reserves to itself, its employees, contractors and designees a right and easement over and upon all of the Common Area for the purpose of making, constructing and

BOOK
395 Y 688
PAGE

installing improvements to the Common Area, including fences and walls, and maintaining Common Area, as it deems appropriate in its sole discretion.

(e) Declarant hereby declares that each wall which is built as part of the original construction of Units and placed on a dividing line between Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage shall apply. Further, (i) the cost of repair and maintenance of a party wall shall be shared by Owners who make use of the wall in proportion to such use; (ii) if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it at such Owner's cost, and if the other Owners thereafter make use of such wall they shall contribute to the cost of the restoration in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others as a result of negligent or willful acts or omissions; and (iii) an Owner who by his negligent or willful acts or omissions causes a party wall to be exposed to the elements shall bear the whole cost of furnishing necessary protection against such elements.

Section 5. Development, Sales and Marketing, Leasing. During the Development Period, Declarant hereby reserves for itself and its designees the right to carry on in the Community such activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the development of the Property and/or the construction or sale of Lots or Units, such as sales, leasing and marketing activities and promotional events, and to restrict Members and Occupants from using Common Area during such activities. Such activities shall be conducted in a manner to minimize, to the extent reasonably possible, any substantial interference with the Members' use and enjoyment of Common Area. Declarant may establish and make use of Common Area and facilities within the Community, including clubhouses and other recreational facilities, in connection with marketing and sales and leasing activities relating to the Community. This may include, without limitation, maintaining business and sales or leasing offices and displays in clubhouses, holding marketing and promotional events open to the general public, the creation, placing and maintaining of signs, and the distribution of marketing materials that include pictures or images of real property, property improvements and facilities within the Community.

BOOK
395 V
PAGE
689

ARTICLE VII

Indemnification; Disclaimer and Release of Liability; Insurance.

Section 1. General. Notwithstanding any duties of the Association to maintain any Common Area, right-of-ways, street lighting or other improvements within the Property and at the entrances to the Property, or any other duties imposed upon or accepted by the Association, the Association shall not be liable for injury or damage caused by any latent or other condition in any portion of such rights-as-ways, Common Area, street lighting, other improvements or otherwise, nor for injury caused by or resulting from the elements (including any water which may leak or flow from the Common Area or facilities), Owners or other persons. The Association shall indemnify, defend and hold harmless the officers and directors of the Association as set forth in the By-Laws.

Section 2. Disclaimer Concerning Construction Sites and Natural Areas. The Property includes construction sites and natural areas, and each Owner acknowledges that there are certain hazards that are inherent to residing or being in the vicinity of such areas, including without limitation, construction hazards, water hazards, animals, noxious plants and unmarked holes. Neither the Declarant, the Association, any Builder nor any of their respective successors, assigns, officers, directors, committee members, employees, management agents, contractors or sub-contractors, shall be liable or responsible to any Owner, Occupant, visitor, guest or invitee for construction sites and natural areas or for their

condition or for any injury, damage or loss cause, resulting from or arising in connection with any plants or animals therein or originating therefrom.

Section 3. Limitation of Other Liability. Neither the Declarant nor the Association shall be responsible for the failure of any services to be obtained by the Association or paid for out of Common Expenses, or for loss or damage, by theft or otherwise, of personal property which may be stored or taken upon the Common Area. No diminution or abatement of Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to Common Areas or facilities, or from any action taken by Declarant or the Association to comply with any of the provisions of the Governing Documents or with any law or ordinance or directive of any governmental authority.

Section 4. Association Required Coverage: Owner Required Coverage. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the types of insurance and at the limits of coverage for the Common Area and other insurable risks (e.g., workers compensation, flood insurance, directors and officers liability, fidelity insurance, etc.) as is reasonably available at reasonable cost and determined by the Board in its business judgment to necessary or appropriate. Each Owner covenants and agrees with all other Owners and with the Association to obtain and maintain, at all times and at such Owner's expense, homeowners insurance to cover claims for personal injury and property insurance for the full replacement cost of such Owner's Unit, less a reasonable deductible. This requirement is for the benefit of all Owners and failure to obtain such insurance may subject such Unit to a Specific Assessment for the cost of obtaining and maintaining such insurance; however, the Association is not obligated to monitor compliance with this insurance requirement, ensure that such insurance is obtained, or obtain such insurance, and shall have no liability for any losses or expenses resulting from any such personal injury or property damage or loss.

BOOK PAGE
395 V 690

ARTICLE VIII
General Provisions

Section 1. Application. All Owners, employees of Owners, guests of Owners, tenants, Occupants or other persons who may, in any manner, use the Community or any portion thereof shall be subject to the provisions hereof, and to the provisions of the Governing Documents.

Section 2. Enforcement. The Association, an assignee or agent of the Association, the Board of Directors, the ARC, the Declarant, or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by any party named above to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event any action is brought to enforce any of the provisions of this Declaration by either the Association, an assignee or agent of the Association, the Board of Directors, the ARC, or the Declarant, such party, if successful, shall be entitled to recover of the defendant therein all costs of the action, including reasonable attorneys' fees and costs. In addition to any other means of enforcement provided for in this Declaration, after written notice to the Owner and an opportunity to be heard in accordance with the By-Laws, the Association shall have the right to assess charges and fines against an Owner for violation of the Governing Documents by such Owner or Owner's guests, tenants or invitees. Such charges and fines shall be collectible as a Specific Assessment, and shall constitute a lien upon the Owner's Lot or Unit, as the case may be, and shall be the personal obligation of the Owner.

Section 3. Severability. Invalidation of any Section or portion of this Declaration by judgment or court order, shall in no way affect any other Sections or portions, which shall remain in full force and effect.

Section 4. Notices. Any notice sent or required to be sent to any party under the provisions of this Declaration, including, without limitation, notices of Assessments and charges and notices of meetings or hearings, shall be deemed to have been properly given when (i) delivered by hand to the intended recipient, (ii) mailed, postage prepaid, to the last known mailing address shown in the records of the Association for such addressee at the time of mailing, or (iii) if to an Owner, sent by email to the last known email address of the Owner shown in the records of the Association for such Owner. Each Owner agrees to keep the Association informed of such Owner's current mailing address, email address and phone numbers.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with the Property, bind the Property and shall inure to the benefit of and be enforceable by the Association, an assignee of the Association, the Declarant, the ARC, or any Owner, and their respective legal representatives, heirs, successors and assigns, for an initial period of twenty (20) years from the date of recording in the Public Records and for successive periods of ten (10) years unless discontinued as follows: to discontinue some or all of the covenants and restrictions of this Declaration at least two-thirds of the record Owners shall execute a document identifying the covenants and restrictions to be discontinued (which may be incorporated by a reference to another recorded document). Such document, together with the affidavit of an attorney licensed to practice in this State, stating that he or she has searched the land records and has verified the names of the record owners appearing in the document, shall be recorded in the Public Records prior to the expiration of the initial twenty (20) year period, or any subsequent ten (10) year extension, provided, however, that no such discontinuation shall be effective unless made and recorded prior to the lapse of time of such initial period or extension.

Section 6. Amendment of Declaration.

(a) Until termination of its Class B Membership in the Association, Declarant shall have the sole right, in its discretion, to unilaterally amend this Declaration. Thereafter, Declarant may from time to time unilaterally amend this Declaration if such amendment is necessary to (i) bring any provision into compliance with any applicable law or governmental rule or regulation, (ii) to enable any reputable title insurance company to issue title insurance coverage on a Lot or Unit; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Units, or (iv) during the Development Period, for any other purpose, provided the amendment has no material adverse effect upon the rights or obligations of any Owner under this Declaration.

(b) Upon termination of Declarant's Class B Membership in the Association, the Association shall have the power to amend this Declaration and Design Guidelines by the affirmative vote of a majority of Voting Members who are voting in person or by proxy at a meeting duly called for this purpose; provided, however, that no such amendment during the Development Period shall be effective without prior notice to and the written consent of Declarant.

Section 7. Lease of Unit. No Unit shall be leased or used for short-term (defined as any period of less than six (6) consecutive months), transient or hotel purposes, nor may any Owner of such Unit lease less than the entire Unit or enter into a lease that does not comply with applicable zoning laws and regulations related thereto. All leases must be in writing and provide that the terms of the lease and the occupancy of the Unit is subject in all respects to the Governing Documents, and that any failure by any lessee to comply with the terms of such documents shall constitute a default under such lease. A complete, signed copy of any such lease and any amendments thereto shall be provided by the Owner of the Unit to the Association upon the Association's request.

395 V 691
BOOK PAGE

Section 8. Litigation. No judicial, administrative or arbitration proceedings shall be commenced or prosecuted by the Association unless approved by the affirmative vote of seventy-five (75%) percent of the Voting Members who are voting in person or by proxy at a meeting duly called for this purpose. However, this section shall not apply to:

- (a) Any actions brought by the Association, the ARC or an agent or assignee of the Association to enforce any provisions of the Governing Documents (including, without limitation, the foreclosure of liens or the enforcement of use restrictions);
- (b) Imposition and collection of Assessments, charges or fines as provided hereinabove;
- (c) Counterclaims or cross-claims brought by the Association in proceedings instituted against it.

Section 10. Conflicts; Construction. In the event of any irreconcilable conflict between this Declaration and the By-Laws or Articles of Incorporation, the provisions of this Declaration shall control. The Board shall have the right to construe the provisions of this Declaration in the event of any ambiguity and, in the absence of manifest error in doing so, such construction shall be final and binding on the Members.

Section 11. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine and non-personal entities, as well as the singular and plural wherever the context provides or permits.

Section 12. Time of the Essence. Time is of the essence for purposes of this Declaration.

[remainder of page intentionally left blank]

BOOK
395 V
PAGE
692

ARTICLE IX

Assignment Of Association's Rights And Duties; Addition or Withdrawal of Property

Section 1. Assignment of Rights and Duties. The Association may, from time to time, delegate by contract any or all of its rights, powers, discretion and duties described in this Declaration to such agents or managers as determined by the Board. In addition, the Association may permanently or temporarily assign and transfer by contract any or all of its powers and duties (specifically including, but not limited to, discretionary powers and duties), rights and obligations reserved to it by this Declaration to any one or more Persons which will accept the same, including Declarant or an Affiliate of Declarant.

Section 2. Addition or Withdrawal of Real Property. Notwithstanding any other provision of this Declaration, and except as expressly prohibited or limited by applicable law, during the Development Period Declarant has the unilateral right, without the consent of the Association or any Owner (other than the owner of such real property), to execute and record in the Public Records an amendment to this Declaration or a Supplemental Declaration adding additional real property to, or withdrawing any real property from, the Property that is subject to this Declaration.

BOOK PAGE
395 V 693

ARTICLE X

Constructive Notice

Every Person who hereafter owns or acquires any right, title, estate or interest in or to any portion of the Property is and shall be conclusively deemed to have consented to and agreed to every covenant, condition and restriction contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in such portion of the Property.

IN WITNESS WHEREOF, the foregoing instrument has been executed under seal, by Declarant, on this 7th day of October, 2013.

Declarant:

WHITAKER INVESTMENT GROUP, LLC

By:

Brett S. Turner, Manager

Signed, sealed and delivered
in the presence of

Witness

Notary Public
My Commission Expires:
(NOTARIAL SEAL)



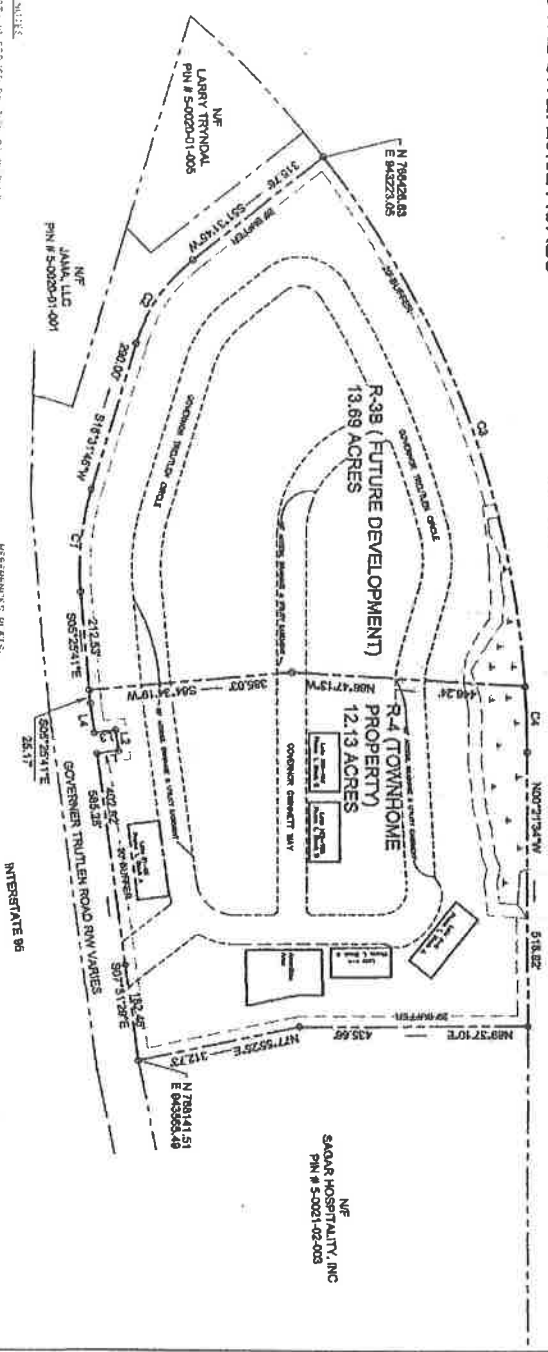
EXHIBIT "A"
(NOT TO SCALE)

SITE AREA
R-4 ZONING: 12.13 ACRES
R-3B ZONING: 13.69 ACRES
TOTAL SITE: 25.82 ACRES

NE
NORFOLK SOUTHERN COMPANY
PIN # 5-0021-001

CURVE	LENGTH	RADIUS	TANGENT	DELTA	CHORD	CHORD BEARING
C1	197.06	522.10	100.00	21°11'43"	199.51	N00°37'34"E
C2	199.74	317.16	100.00	34°59'57"	190.74	N04°01'45"E
C3	1092.78	1893.47	603.16	34°03'54"	1079.65	S21°17'08"E
C4	124.57	1893.47	62.31	3°32'24"	124.54	S02°15'54"E

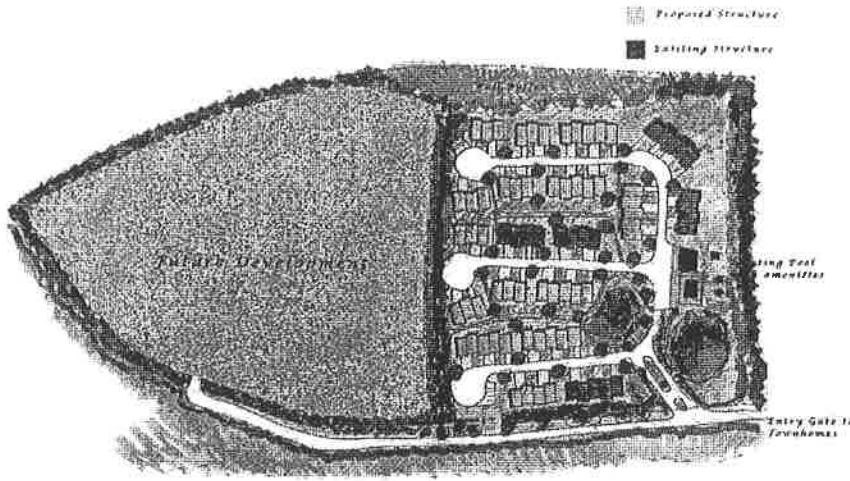
LINE	LENGTH	BEARING
L1	40.46	S90°42'15"W
L2	18.14	S08°21'40"E
L3	98.02	N82°13'45"E
L4	64.11	S06°20'21"E



- GENERAL NOTES**
1. PROPERTY IS ZONED BY CITY OF RICHMOND.
 2. WATER AND SEWER SYSTEMS.
 3. HORIZONTAL ELEVATION SHALL BE APPROVED BY THE CITY OF RICHMOND.
 4. THE ZONING MAP IS PREPARED BY ENG ENGINEERING SERVICES, INC. ON JUNE 14, 2010.
 5. ALL RIGHTS NOT TAKEN FROM PUBLIC PLATS AND NOT FIELD VERIFIED.

- REFERENCE PLATS**
1. S.W.B. 375, PAGE 95
 2. S.W.B. 395, PAGE 11
- AREA: PARCEL: BLOCK: C: 019 ACRES
E.O.C. FIELD: 2 V23.000-1
E.O.C. PLAT: V23.000-1
ACQUISITION METHOD: ODC/ISS
EQUIPMENT USED: 2013, JIS
FIELD SURVEY MADE COMPLETED IN NOV 2004

EXHIBIT B
DEVELOPMENT PLAN



BOOK
395 Y
PAGE
695

Towne Park Pooler Master Plan

Declarant plans to construct or cause to be constructed on the Property a total of approximately 55 Townhomes on lots generally located in the areas identified on the image above as Proposed Structures. Declarant expressly reserves the right to alter, without notice, the location, size and composition of said structures and the total number of such dwellings. The development is planned to occur in phases. As phases are developed, plats of subdivision will be recorded in the Public Records showing the actual location of developed lots and identifying Common Areas, streets, rights-of-way and easements. Existing Townhomes are shown on the image above as Existing Structures and an existing pool and entry gate are also shown on said image. All other depictions of improvements are conceptual and not completed and are subject to change without notice.