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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**STILLWATER**

Recorded 12/13/02  
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**- TABLE OF EXHIBITS -**

<u>Exhibit</u>	<u>Subject Matter</u>
"A"	Land Initially Submitted
"B"	Land Subject to Annexation
"C"	Initial Use Restrictions
"D"	By-Laws of Stillwater Community Association, Inc.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**STILLWATER**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR STILLWATER ("Declaration") is made as of the date set forth on the signature page hereof by DKK Development Company, Inc., a Georgia corporation ("Declarant").

**PART ONE: INTRODUCTION TO STILLWATER**

*This Declaration is established to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of Stillwater as a planned community.*

**Article I      Creation of Stillwater**

1.1.      Purpose and Intent.

This Declaration establishes a general plan of development for Stillwater, a planned community, and provides for Stillwater's overall development, administration, maintenance, and preservation. An integral part of the development plan is Stillwater Community Association, Inc., an association comprised of the owners of property within Stillwater, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

This document does not and is not intended to create a condominium within the meaning of O.C.G.A. § 44-3-70, *et seq.*

1.2.      Binding Effect.

This Declaration governs the property described in Exhibit "A," and any property subjected to this Declaration in the future in accordance with Section 9.1. This Declaration shall run with the title to, and bind anyone having any right, title, or interest in, any portion of such property, their heirs, successors, successors-in-title, and assigns.

Declarant, the Association, any aggrieved Owner, and their respective legal representatives, heirs, successors, and assigns may enforce this Declaration. This Declaration, as it may be amended, is intended to remain in effect in perpetuity. However, to the extent that Georgia law limits the period during which the covenants set forth in this Declaration may run with the land, this Declaration shall run with and bind Stillwater so long as permitted. After such time, this Declaration shall be extended automatically for successive 20-year periods, unless terminated in accordance with O.C.G.A. § 44-5-60, as may be amended, within the year preceding any extension.

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If any provision of this Declaration would be unlawful, void, or voidable by reason of any Georgia law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. 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.

### 1.3. Governing Documents.

The following diagram identifies and summarizes the Stillwater's "Governing Documents," each as they may be amended:

<b>GOVERNING DOCUMENTS</b>	
<b>Declaration</b> (recorded)	creates obligations which are binding upon the Association and all present and future owners of property in Stillwater
<b>Supplemental Declaration</b> (recorded)	may add property to Stillwater; may impose additional obligations or restrictions on such property
<b>Articles of Incorporation</b> (filed with Secretary of State)	establish the Association as a non-profit corporation under Georgia law
<b>By-Laws</b> (the Board adopts)	govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
<b>Design Guidelines</b> (Declarant adopts)	establish architectural standards and guidelines for improvements and modifications to Units, including structures, landscaping, and other items on Units
<b>Use Restrictions</b> (initial set attached as Exhibit "C")	govern use of property, activities, and conduct within Stillwater
<b>Board Rules</b> (Board adopts by resolution)	establish rules, policies, and procedures, for internal governance and Association activities, regulate operation and use of Common Area

Additional restrictions or provisions which are more restrictive than the provisions of this Declaration may be imposed on any portion of Stillwater, in which case, the more restrictive provisions will control. However, during the Development and Sale Period, no Person shall record any additional covenants, conditions, and restrictions, whether contained in a declaration or other

instrument, affecting any portion of Stillwater without Declarant's written consent. Thereafter, the Association must consent. Any instrument recorded without the required consent is void and of no force and effect.

If there are conflicts between Georgia law, the Articles, the Declaration, and the By-Laws, Georgia law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

The Governing Documents apply to all Owners and occupants of property within Stillwater, as well as to their respective tenants, guests, and invitees.

If any court should determine that any provision of this Declaration or any other of the Governing Documents is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

## Article II Concepts and Definitions

### 2.1. Defined Terms.

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. The following capitalized terms shall be defined as set forth below.

"Architectural Review Committee" or "ARC": The committee appointed by the Board to administer architectural controls within Stillwater, as provided in Article IV.

"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.

"Articles": The Articles of Incorporation of Stillwater Community Association, Inc., filed with the Georgia Secretary of State, as they may be amended.

"Association": Stillwater Community Association, Inc., a Georgia non-profit corporation, its successors or assigns.

"Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units.

"Board": The body responsible for administering the Association, selected as provided in the By-Laws, and serving as the Association's board of directors under Georgia corporate law.

"Builder": Any Person who purchases one or more Units for the purpose of constructing homes for later sale to consumers, or who purchases land within Stillwater for further subdivision, development, and/or resale in the ordinary course of its business.

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**"By-Laws"**: The By-Laws of Stillwater Community Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "D."

**"Class 'A' Member"**: Each Owner except, during the period of Class 'B' Membership, Declarant.

**"Class 'B' Control Period"**: The period of time during which the Class "B" Member is entitled to appoint a majority of Board members. The Class "B" Control Period shall terminate on the first to occur of the following:

(a) when 100% of the total number of Units permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders;

(b) December 31, 2020; or

(c) when, in its discretion, the Class "B" Member so determines

**"Class 'B' Member"**: Until termination of the Class 'B' Membership, Declarant.

**"Common Area"**: All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the Owners' common use and enjoyment.

**"Common Expenses"**: Expenses the Association incurs or expects to incur for the general benefit of the Owners, including any reasonable reserve which the Board determines is necessary or otherwise appropriate.

**"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing throughout Stillwater, or the minimum standards established pursuant to the Design Guidelines, Use Restrictions, and Board resolutions, whichever is the highest standard. Initially, Declarant shall establish such standard. The Community-Wide Standard may contain objective elements, such as specific lawn or house maintenance requirements, and subjective elements subject to the Board's or the ARC's discretion. The Community-Wide Standard may evolve as development progresses and as Stillwater matures.

**"Declarant"**: DKK Development Company, Inc., a Georgia corporation, or any successor or assign who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale as a part of Stillwater and who is designated as Declarant in a recorded instrument which the immediately preceding Declarant executes.

**"Design Guidelines"**: Stillwater's architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV, as they may be amended.

**"Development and Sale Period"**: The period during which Declarant owns real property within Stillwater or has an unexpired option unilaterally to annex property into Stillwater.

**"Limited Common Area"**: A portion of the Common Area primarily benefiting one or more, but less than all, Units, as described in Article XI.

**"Master Plan"**: The master land use plan(s) (including the Final Plat described on Exhibit "A" and the final plat of any additional property which is made a part of the Stillwater in the future) for the development of Stillwater, as may be amended, as approved by Glynn County, Georgia, which include all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Declarant is not obligated to submit property shown on the Master Plan to this Declaration. In addition, Declarant may submit property to this Declaration which is not shown on the Master Plan. The Master Plan is subject to change, in Declarant's discretion, without notice or consent except as may be required by law.

**"Member"**: A Person who is a member in the Association pursuant to Section 6.2.

**"Mortgage"**: A mortgage, deed of trust, deed to secure debt, or any other form of security instrument affecting title to any Unit. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage. An "Eligible Holder" is any institutional holder, insurer, or guarantor of a first priority Mortgage which provides the Association a written request for notices, which request includes the Mortgagee's name and the street address of the Unit to which its Mortgage relates.

**"Owner"**: One or more Persons who hold title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation (e.g., a Mortgagee). If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**"Person"**: An individual, a corporation, a partnership, a trustee, or any other legal entity.

**"Special Assessment"**: Assessments, in addition to Base Assessments, levied against all Owners in accordance with Section 8.4.

**"Specific Assessment"**: Assessments levied against a particular Owner or Owners in accordance with Section 8.5.

**"Stillwater"**: All real property made subject to this Declaration, whether by inclusion on Exhibit "A" to this Declaration or by annexation in accordance with Section 9.1.

**"Supplemental Declaration"**: A recorded instrument which subjects additional property to this Declaration, identifies Limited Common Areas, and/or creates or imposes additional covenants on the land described in such instrument.

**"Unit"**: A portion of Stillwater, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The boundaries of each Unit shall be delineated on a recorded subdivision plat.

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**"Use Restrictions":** The initial Use Restrictions set forth in Exhibit "C," as they may be supplemented, modified, and repealed pursuant to Article III.

2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument in the Office of the Clerk of the Superior Court of Glynn County, Georgia, or such other place designated as the official location for filing documents affecting title to real estate in Glynn County, Georgia, in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise its discretion or make a determination may do so without consent or approval of others, and without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

**PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*This Declaration establishes procedures for adopting, modifying, applying, and enforcing standards for use and conduct, maintenance, and architecture at Stillwater while providing the flexibility for the community standards to evolve as Stillwater develops and matures.*

**Article III Use and Conduct**

3.1. Restrictions on Use, Occupancy, and Alienation.

The restrictions set forth in this Section may be amended only in accordance with Article XVII.

(a) Residential and Related Uses. Units shall be used primarily for residential and related purposes. No business shall be conducted in, on, or from any unit, except that an Owner or another resident of the Unit may conduct business activities on such Unit if the business activity is ancillary to the primary residential occupancy of the Unit and:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

- (ii) complies with applicable zoning requirements;
- (iii) does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees, or door-to-door solicitation within Stillwater; and
- (iv) is consistent with the residential character of Stillwater and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others, as determined in the Board's sole discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required. Leasing a dwelling for residential purposes is not a "business" within the meaning of this subsection.

This Section shall not apply to restrict Declarant's activities, nor shall it restrict the activities of Persons Declarant approves with respect to the development and sale of property in Stillwater. This Section shall not apply to Association activities related to the provision of services or to operating and maintaining Stillwater including the recreational and other amenities.

(b) Leasing. "Leasing" is the continuous, exclusive occupancy of a dwelling by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, or gratuity. The principal dwelling on the Unit may be leased only in its entirety (e.g., separate rooms within the same dwelling may not be separately leased), and any detached "in-law suite" or "guest house" may not be independently leased. Leasing shall be for residential purposes only.

**All leases shall be in writing and shall have a term of at least seven months, except with the Board's prior written consent. All leases must require that tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents; provided, the Governing Documents shall apply regardless of whether such obligation is specifically set forth in the lease. The restrictions on lease terms set forth in this paragraph shall not apply to Units Declarant owns.**

Within ten days of a lease being signed, an Owner shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner is responsible for giving the tenant copies of the Governing Documents. In addition to this sub-section (b), the Board may adopt reasonable Use Restrictions and rules regulating leasing and subleasing.

(c) Occupants Bound. Every Owner shall cause anyone occupying or visiting his or her Unit to comply with the Governing Documents and shall be responsible for all violations and

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losses they cause to the Common Areas, notwithstanding the fact that such Persons are also responsible for complying and may be sanctioned for any violation.

### 3.2. Framework for Regulation.

As part of the general plan of development, the Governing Documents establish a framework of covenants, easements, and restrictions which govern Stillwater. This includes the initial Use Restrictions set forth in Exhibit "C." Within that framework, the Board and the Members must be able to respond to unforeseen problems and changes affecting Stillwater. This Article establishes procedures for modifying and expanding the Use Restrictions to respond to such changes.

The procedures described in this Article are not intended to apply to reasonable rules and regulations relating to use and operation of the Common Area, which the Board may adopt by resolution, or other administrative rules, unless the Board chooses, in its discretion, to submit to such procedures.

### 3.3. Owners' Acknowledgment and Notice to Purchasers.

**Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Use Restrictions and Board rules, which may change from time to time. All Unit purchasers are on notice that the Association may have adopted changes to the Use Restrictions and that such changes may not be set forth in a recorded document. Copies of the current Use Restrictions and Board rules may be obtained from the Association.**

### 3.4. Rule Making Authority.

(a) Subject to the terms of this Article, Declarant, during the Class B Control Period, and the Board, thereafter, may change (*i.e.*, modify, cancel, limit, create exceptions to, or add to) the Use Restrictions. The Board shall be bound to exercise business judgment and reasonableness on behalf of the Association and the Members.

(b) The Board shall notify the Members of any proposed change to the Use Restrictions at least five business days before the Board meeting to consider the change. Notification may be by first class mail, electronic mail, posting in the Common Area, or any other reasonable method the Board deems appropriate. The Members shall have a reasonable opportunity to be heard at such Board meeting. The proposed change to the Use Restrictions shall be approved unless disapproved by Members representing a majority of the Association's Class "A" votes. The Board is not obligated to call a meeting of the Members to consider disapproval except as provided in the By-Laws for special meetings. If the Board receives a request to hold a special meeting before the change's effective date, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting.

(c) Alternatively, the Members representing a majority of the Class "A" votes in the Association, at an Association meeting duly called for such purpose, may vote to change the Use

Restrictions then in effect. Any such change shall require approval of the Class "B" Member, if any.

(d) Before any Use Restriction change becomes effective, the Board shall send a copy of the new or changed Use Restriction to each Owner. The change does not become effective until 30 days following distribution to the Owners.

(e) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control. In the event of a conflict between the Use Restrictions and any provision within this Declaration (exclusive of the Use Restrictions), the Declaration provision shall control.

(f) The Association shall provide to any requesting Member or Mortgagee, without cost, one copy of the Use Restrictions then in effect. The Association may charge a reasonable fee for additional copies.

### 3.5. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Exhibit "C," the Association's actions with respect to Use Restrictions and Board Rules must comply with the following:

(a) Similar Treatment. Similarly situated Owners must be treated similarly.

(b) Displays. Owners' rights to display religious and holiday signs, symbols, and decorations on their Units of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to such displays.

The Association shall not regulate the content of political signs; however, it may regulate the time, place, and manner of posting such signs (including design criteria).

(c) Household Composition. The Association shall not interfere with any Owner's freedom to determine the composition of his or her household, except that it may impose and enforce reasonable occupancy limits.

(d) Activities Within Dwellings. The Association shall not interfere with activities carried on within a dwelling, except it may prohibit activities not normally associated with residential property, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that are an unreasonable source of annoyance.

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(e) Alienation. The Association shall not prohibit leasing or transfer of any Unit, or require the Association's or the Board's consent prior to leasing or transferring a Unit. The Association may require that Owners use Association-approved lease forms (or include specific lease terms) and may impose a reasonable review or administrative fee on the lease or transfer of any Unit. In addition, among other things, Section 3.1(b) imposes a minimum lease term.

(f) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Unit in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(g) Reasonable Rights to Develop. The Association may not impede Declarant's right to develop any portion of Stillwater.

The limitations in subsections (a) through (f) of this Section shall not apply to amendments to this Declaration adopted in accordance with Article XVII.

#### **Article IV Architecture and Landscaping**

##### **4.1. General.**

No structure or thing shall be placed, erected, or installed upon any Unit and no improvement or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removing landscaping) shall take place within Stillwater, unless permitted or approved under this Article and the Design Guidelines.

Approval is not required to repaint the exterior of a structure in accordance with its most recently approved color scheme or to remodel, paint, or redecorate the interior of a structure. However, interior modifications which are visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of Stillwater shall be designed and built in accordance with the plans and specifications of a licensed architect which Declarant approves, unless Declarant or its designee permits otherwise.

This Article shall not apply to Declarant's activities, or to the Association's activities during the Class "B" Control Period.

##### **4.2. Architectural Review.**

(a) Declarant's Authority. Until 100% of the Units permitted under the Master Plan have been issued certificates of occupancy and conveyed to Class "A" Members other than Builders, Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for new construction and landscaping, and modifications to existing improvements within Stillwater. There shall be no surrender or delegation of this authority prior to that time except in a recordable instrument which Declarant

executes. Declarant may, in its discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder. In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Architectural Review Committee. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Committee. Upon the expiration, surrender, or delegation to the Association of all or any of Declarant's authority, the Board shall appoint the Architectural Review Committee, the members of which shall thereafter serve and may be removed in the Board's discretion. The ARC shall have no rights or authority until Declarant's authority under this Article expires or is delegated to the Association. Any delegation of authority is subject to the conditions set forth above.

(c) Fees; Assistance. Declarant or, upon formation of the ARC, the Board, may establish and charge reasonable fees for reviewing applications and may require such fees to be paid in full prior to review. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget as a Common Expense.

(d) Reviewer. For purposes of this Article, the entity having jurisdiction in a particular case, whether Declarant or its assigns or the ARC, shall be referred to as the "Reviewer."

#### 4.3. Guidelines and Procedures

(a) Design Guidelines. Declarant shall prepare the initial Design Guidelines. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines until the expiration of its authority under Section 4.2, notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates the power to amend. Upon termination or delegation of Declarant's right to amend, the Board may amend the Design Guidelines.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of structures previously approved once the approved construction or

modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

Each Owner and each Builder who seeks to engage in development or construction within Stillwater is responsible for obtaining (and for providing to his or her architect and building contractor(s)) the Design Guidelines prior to commencing any design or construction of an improvement or other activity described in Section 4.1. In Declarant's discretion, the Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. If the Design Guidelines are not recorded, the version in effect at the time of the submission of a completed application shall be the effective version of the Design Guidelines with respect to such application.

(b) **Procedures.** Unless the Design Guidelines otherwise specifically provide, no activity described in Section 4.1 shall commence on any portion of Stillwater until an application for approval has been submitted to and approved by the Reviewer. An application for approval must be in writing and must include such plans and specifications as the Design Guidelines or the Reviewer requires. Plans and specifications shall be required to show site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction that the Reviewer deems applicable. The Design Guidelines and the Reviewer may require the Owner to submit any information reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. The Reviewer may base decisions on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and any such determination shall not be subject to the provisions of Article XII nor shall it be subject to judicial review so long as made in good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and other information it requires. The Reviewer may require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submittal. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted,

shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notices shall be deemed given at the time of deposit with the U. S. Postal Service or an overnight delivery service (e.g., FedEx) or at the time of facsimile, electronic, or personal delivery to the applicant, as evidenced by a printed confirmation of transmission or the signature of the person accepting such delivery.

As part of any approval, the Reviewer may require that construction commence in accordance with approved plans within a reasonable time period. If construction does not commence within the required time period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All work shall be completed within 18 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

#### 4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require that objectionable features be changed. This shall not impact the Reviewer's right to disapprove similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed a waiver of the right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### 4.5. Variances.

Any variance from applicable Glynn County requirements shall require Reviewer approval, in addition to the approval of Glynn County. In addition, the Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain any governmental agency's approval, the issuance of any permit, or the terms of any financing need not be considered a hardship warranting a variance. During the Development and Sale Period, no variance shall be effective without Declarant's approval.

#### 4.6. Limitation of Liability.

The standards and procedures established pursuant to this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Stillwater; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, or size, of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, the ARC, any Association committee, and any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans reviewed or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a Builder in Stillwater; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the ARC, other Association committees, and the members of each as provided in Section 7.6.

#### 4.7. Builder Performance.

Declarant shall not be responsible for, or a guarantor of, performance by any Builder of all or any of its obligations to any Owner pursuant to any contracts for the sale of a Unit or the construction of a structure on a Unit or otherwise. Declarant has not made, and does not make, any warranty or representation with respect to performance by any Builder under any contract or otherwise.

Each Owner acknowledges and agrees that Declarant shall have no liability or obligation to Owner, related to or arising out of any contract with a Builder or otherwise, by reason of any failure by a Builder fully and adequately to perform its obligations to Owner. Each Owner further acknowledges and agrees that he or she has not, in entering into any contract with a Builder, relied upon any representations, oral or written, of Declarant or any agent, or employee of Declarant.

#### 4.8. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall respond to such request within 30 days after receiving a written request and may charge a reasonable administrative fee for issuing such a certificate. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had actual knowledge of as of the date of such certificate. A certificate of compliance relating to a completed improvement shall be a condition precedent to seeking or otherwise requesting a certificate of occupancy for such improvement from Glynn County.

#### 4.9. Enforcement.

Any construction, alteration, or other work done in violation of this Article or the Design Guidelines is subject to enforcement action. Upon written request from the Association or Declarant, an Owner shall, at his/her own cost and expense, and within a reasonable time frame identified in the request, cure the violation or restore the Unit to substantially the same condition as existed before the violation occurred. Should an Owner fail to cure the problem or otherwise restore the property as required, the Association, Declarant, or their designees shall have the right to enter the property, remove the violation, and restore the property. All costs, together with interest at the rate the Board establishes (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Unit and collected as a Specific Assessment.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, 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 by the deadline imposed, Declarant or the Association may, after notifying the Owner and allowing an opportunity to be heard in accordance with the By-Laws, enter upon the Unit and remove or complete any incomplete work and assess all costs incurred against the Unit and its Owner as a Specific Assessment.

Any act of any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. 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 from Stillwater, subject to the Owner being given notice and an opportunity for a hearing as provided for in the By-Laws. Declarant, the Association, and their respective officers and directors, shall not be held liable to any Person for exercising the rights granted by this Section.

The Association shall be primarily responsible for enforcing this Article. If, however, in Declarant's discretion, the Association fails to take appropriate enforcement action within a reasonable time period, Declarant, during the Development and Sale Period, may, but shall not be obligated to, exercise the enforcement rights set forth above. In such event, Declarant may assess and collect Specific Assessments against the violating Owner and assert the Association's lien rights pursuant to Article VIII. The Association hereby assigns to Declarant such rights and authority, including the right to all funds collected, and no further assignments shall be required.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the Reviewer's decisions. The Association shall be responsible for any costs which Declarant incurs, including reasonable attorneys' fees and court costs, in pursuing such available legal or equitable remedies. The alternative dispute resolution provisions set out in Article XII shall not apply to actions by Declarant or the Association to enforce the provisions of this Article or the Reviewer's decisions.

#### 4.10. Coastal Marshlands Protection Act.

Each Owner acknowledges that all or some of the Units may be subject to the jurisdiction of the Georgia Department of Natural Resources and the Coastal Marshlands Protection Act of 1970. Each affected Owner shall be responsible for obtaining any permits required under the Coastal Marshlands Protection Act for constructing improvements on the Unit.

### **Article V Maintenance and Repair**

#### 5.1. Maintenance of Units.

Each Owner shall maintain his or her Unit, including all improvements comprising the Unit, in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, or unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration. Owners shall not permit any structures, equipment, or other items on the exterior portions of a Unit to become rusty, dilapidated, or to otherwise fall into disrepair.

The Association may, but shall not be obligated to, provide maintenance services on a Unit and, in such event, shall assess all costs incurred against the benefited Unit and its Owner as a Specific Assessment in accordance with Section 8.5.

#### 5.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility, as provided in Section 7.2.

#### 5.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

In the event of damage to or destruction of a structure on a Unit, the Owner shall repair or reconstruct the structure in a manner consistent with the original construction or such other plans and specifications approved in accordance with Article IV. Any such repair or reconstruction shall commence not later than three months following the event of damage or destruction and shall be completed not later than one year following commencement, unless the Board, in its discretion, agrees to extend such periods. During the period prior to commencement of repairs or reconstruction, the Owner shall maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

### PART THREE: STILLWATER GOVERNANCE AND ADMINISTRATION

*The Association is the mechanism by which each Owner is able to participate in the governance and administration of Stillwater. While the Association's Board has responsibility for day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership -- the Unit Owners.*

#### Article VI The Association and its Members

##### 6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also has primary responsibility for enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Georgia law.

##### 6.2. Membership.

Every Owner is a Member of the Association; provided, there is only one membership per Unit. If more than one Person owns a Unit, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners are jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not an individual (e.g., a corporation or a partnership) may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary or its designee.

The Association shall have two classes of membership, Class "A" and Class "B." Class "A" Members shall be all Owners other than the Class "B" Member. The sole Class "B" Member shall be Declarant until termination of the Class "B" membership. The Class "B" membership shall terminate upon the earlier to occur of: (i) the conveyance of 100% of the Units permitted under the Master Plan to Class "A" Members other than Builders; or (ii) when, in its discretion, Declarant so determines and declares in a recorded instrument.

##### 6.3. Voting.

(a) Class "A" Members. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Unit (subject to the qualification set forth in the definition of Unit under Section 2.1). No vote shall be exercised for any property which is exempt from assessment under Section 8.8. Owners of Units for which assessments have not yet commenced under Section 8.6 shall be entitled to cast a vote for such Units. All Class "A" votes shall be cast as provided in Section 6.3(c).

(b) Class "B" Member. The Class "B" Member shall not vote, but may appoint a majority of the Board members during the Class "B" Control Period, as specified in the By-Laws,

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and may exercise the additional rights specified throughout the Governing Documents. Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Unit it owns.

(c) Exercise of Voting Rights. Members may exercise voting rights as set forth above and in the By-Laws. If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves; provided if more than one Person seeks to exercise the vote for a Unit, the last vote cast or received shall constitute the vote for such Unit.

## **Article VII Association Powers and Responsibilities**

### **7.1. Acceptance and Control of Association Property.**

(a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by others.

(b) Declarant and its designees may convey to the Association, and the Association shall accept, "as is," personal property and/or fee title, leasehold, or other property interests in any improved or unimproved real property described in Exhibit "A" or "B." Upon Declarant's written request, the Association shall reconvey to Declarant property originally conveyed to the Association for no consideration, to the extent Declarant conveyed such property in error or to the extent necessary for Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

### **7.2. Maintenance of Area of Common Responsibility.**

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(a) the Common Area, including, without limitation, entry features, entry gates and gatehouses, recreational amenities, gathering areas, natural areas, lakes, dams, trails, sidewalks, roadways, and streetlights within the Common Area; and

(b) such portions of any additional property which may be dictated by Declarant, this Declaration, any Supplemental Declaration, or any contract, covenant, or agreement which the Association enters into (or which Declarant enters into on the Association's behalf).

To the extent that such work is not performed by Glynn County or another governmental or quasi-governmental entity which has accepted such responsibility, the Association shall also be

responsible for proper functioning of the stormwater drainage system serving Stillwater, including maintenance, repair, and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system, regardless of where located; provided, the Association shall not be responsible for landscaping or other maintenance of any Unit upon which any portion of the stormwater management system lies or which is burdened by any stormwater drainage easement unless otherwise specifically set forth in a Supplement Declaration or in a recorded agreement or plat.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance 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 Board's discretion, to perform required maintenance or repairs, unless Members representing 67% of the total votes in the Association agree in writing to discontinue such operation; provided, if the property is Limited Common Area, at least 67% of the Owners to whom such Limited Common Area is assigned (or such higher percentage as a Supplemental Declaration may require) also must agree in writing. In addition, during the Development and Sale Period, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval.

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; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or other agreements with such owner(s). Maintenance, repair, and replacement of Limited Common Areas may be assessed to the Owners to which the Limited Common Areas are assigned or, if appropriate, may be assessed as a Specific Assessment against particular Owners.

### 7.3. Insurance.

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

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits

sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least two million dollars (\$2,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost, in the judgment of a reasonably prudent person, the Association shall obtain such additional coverages or limits;

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

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment, but not less than an amount equal to one-quarter (1/4) of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Board, in its business judgment, may obtain additional insurance coverage and higher limits.

Premiums for all insurance on the Area of Common Responsibility shall be a Common Expense, except that (i) premiums for property insurance the Association carries on Units, if any, shall be specifically assessed against such Units; and (ii) premiums for insurance on Limited Common Areas may be assessed specifically against only the Unit(s) to which such Limited Common Areas are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Glynn County area. The Association shall make available within Stillwater certificates of insurance for inspection and copying by each Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or otherwise in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Prior to the termination of the Class "B" Control Period, the Board, in the exercise of its business judgment, shall determine whether to repair or reconstruct damaged improvements on the Common Area, including any Limited Common Area. After termination of the Class "B" Control Period, damaged improvements on the Common Area shall be repaired or reconstructed unless Members representing at least 67% of the total votes in the Association decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, repairs shall be made unless at least 67% of the Owners of Units to which such Limited Common Area is assigned also vote within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period may be extended for a reasonable period of time to permit funds or information to be made available. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain for the benefit of all Owners or the Owners of the particular Units benefiting from the insurance coverage, as the Board deems appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction necessary and appropriate.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the membership, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

#### 7.4. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for Governing Document violations, which sanctions include those listed below and any others described elsewhere in the Governing Documents. The Board may establish a range of penalties for different violations, with violations of the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws:

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(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit (fines may be imposed within a graduated range). (In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may first be assessed against the violator; provided, if the violator does not pay the fine within the time period the Board sets, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote (except that no hearing is required if the Owner is more than 60 days delinquent in paying any Base or Special Assessment);

(iii) suspending any services the Association provides (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(iv) suspending any Person's right to use Common Area amenities (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, the Board may not limit ingress or egress to or from a Unit;

(v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Unit in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) requiring an Owner, at his or her expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit or the common element to its previous condition. Upon an Owner's failure to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in Stillwater; and

(viii) levying Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Governing Documents.

(b) In addition, the Board may enforce the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(i) exercising self-help or taking action to abate any violation on a Unit in any emergency situation. An emergency situation shall include any situation where the passage of time or the requirement of process would render enforcement ineffective (e.g., towing vehicles that are in violation of parking rules and regulations);

(ii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances; or

(iii) bringing suit at law or in equity to enjoin any violation, to recover monetary damages, or both.

In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs the Association incurs against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner with reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents are in addition to any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(c) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Any decision to not enforce shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, Glynn County and other governmental authorities with jurisdiction may enforce their ordinances within Stillwater.

#### 7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege expressly given by, or reasonably implied from, the Governing Documents, or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise all of the Association's rights and powers without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action in which Stillwater has a bona fide interest. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the Association's rights and powers, making decisions on the Association's behalf, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Section 3.25 of the By-Laws.

#### 7.6. Indemnification of Officers, Directors, and Others.

Subject to Georgia law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if the then Board approves) 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 Association's 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 Association's officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

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

#### 7.7. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with community associations, properties, or facilities adjacent to or in the vicinity of Stillwater to

contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

#### 7.8. Provision of Services.

The Association may provide, or provide for, services and facilities for the Members and their Units, and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at an Owner's option, or may include the costs in the Association's budget as a Common Expense (if provided to all Units). By way of example, such services and facilities might include landscape maintenance, pest control, cable television, monitoring, access control, care taking, transportation, fire protection, utilities, trash collection, and similar services and facilities.

Nothing in this Section shall be construed as a representation by any Person as to what, if any, services shall be provided, and each Owner acknowledges that services such as those described above are not typically provided to detached, single family homes. In addition, the Board may modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided as a Common Expense shall not exempt an Owner from the obligation to pay assessments for such services.

In any contracts or agreements with third parties for the provision of services within Stillwater, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Association in the collection of such bills.

To ensure consistency in scheduling and compliance with the Community-Wide Standard, the Board, in its discretion, may designate particular service providers (*e.g.*, trash collection, recycling, etc.) to be used by all Owners. In such case, the relationship between the service provider and the Owner may be direct and the expense of such service may be borne by the Unit Owner (*i.e.*, it would not be assessed through the Association).

#### 7.9. Bulk Rate Service Agreements.

The Association may enter into contracts, including bulk rate service agreements, with providers of central telecommunication receiving and distribution services and systems (*e.g.*, cable television, high speed data/Internet/intranet services, and security monitoring), and their components ("Community Systems"), with other utilities, and with other Persons for the maintenance, management, administration, upgrading, modification, and operation of such Community Systems and utilities. The Association's expenses in connection with any such bulk rate contracts shall be a Common Expense to be included in the Base Assessment. However, if particular or additional services or benefits are provided to particular Units, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the costs as a Specific Assessment.

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The terms of any Association contract for Community Systems or other utilities may obligate individual Owners or occupants to execute subscription agreements or other contracts directly with the Persons providing components or services prior to gaining access to the System or utility, or in the alternative, the Association may execute a subscription agreement or contract on behalf of all Owners. Such subscription agreements or other contracts may contain terms and conditions relating to use and access to the Community System or utility which, if violated by the Owner or occupant of a Unit, may result in services to such Owner or occupant's Unit being terminated by the System or utility provider or by the Association. The termination of service for such a violation shall not relieve the Owner of the continuing obligation to pay that portion of assessments or other Association charges pertaining to the Community Systems or common utilities.

The Association shall have no obligation to utilize any particular provider or providers; provided, except for cause (as defined under a written agreement with the provider), the Association may not, without Declarant's consent, terminate or refuse to renew any contract entered into during the Class "B" Control Period.

#### **Article VIII Association Finances**

##### **8.1. Budgeting and Allocating Common Expenses.**

Each year, the Board shall prepare a budget of the estimated Common Expenses for the coming fiscal year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units.

The Association is authorized to levy Base Assessments equally against all Units subject to assessment under Section 8.6 to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income it expects to generate from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the budget's effective date. Prior to termination of the Class "B" Control Period, the budget shall not be subject to Owner approval. After termination of the Class "B" Control Period, the budget is subject to disapproval at a meeting by Members representing at least 67% of the total votes in the Association and by the Class "B" Member, if such exists. The Board shall be under no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the Members' right to disapprove the revised budget as set forth above.

#### 8.2. Budgeting for Reserves.

The Board may include in the Common Expense budget adopted pursuant to Section 8.1 a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. Reserve budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. So long as the Board exercises business judgment in determining the amount of the reserve fund, the amount shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. During the Development and Sale Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

#### 8.3. Declarant's Subsidy Option.

During the Development and Sale Period, Declarant may, but shall not be obligated to, reduce the Base Assessment, or fund any budget deficit for any fiscal year by payment of a subsidy which may be treated as either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the Owners. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

#### 8.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing at least a majority of the total Association vote, and the affirmative vote or written consent of the Class "B" Member, if such exists. 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 Association may levy Specific Assessments against one or more particular Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which the

Association may offer (which might include the items identified in Section 7.8 or 7.9) or which the Association otherwise provides in the Board's discretion. Specific Assessments for special services may be levied prior to the requested service being provided; and

(b) to cover costs incurred in bringing a Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the 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.

#### 8.6. Authority to Assess Owners; Time of Payment.

The obligation to pay assessments shall commence as to a Unit upon the closing of the conveyance of the Unit to a Class "A" Member; provided, no assessment shall be due prior to the month in which the Board first determines a budget and levies assessments pursuant to this Article. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Owners shall pay assessments in such manner and on such dates as the Board may establish. If the Board so elects, Owners may pay assessments in installments. 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 payment. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

#### 8.7. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of Stillwater, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 12% per annum or such higher rate as the Board may establish, subject to the limitations of Georgia law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be each Owner's personal obligation and a lien upon each Unit until paid in full. 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.

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

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

Upon written request, the Association shall 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.

(b) Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as all interest, late charges, and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be recorded and 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 the Association owns a Unit following foreclosure: (a) the Association shall not exercise a vote on its behalf; (b) the Association shall not levy an assessment on it; and (c) the Association shall charge each other Unit, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such acquired Unit had the Association not foreclosed on it. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

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 the Mortgagee's foreclosure. The purchaser of a foreclosed Unit shall not personally be liable for assessments on such Unit due prior to the date title is transferred pursuant to such foreclosure. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.6, including such acquirer, its successors and assigns.

#### 8.8. Exempt Property.

The following real property shall be exempt from payment of Base Assessments and Special Assessments: (a) all Common Area; and (b) any real property dedicated to and accepted by any governmental authority or public utility.

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In addition, both Declarant and the Association shall have the right, but not the obligation, to grant exemptions to schools, houses of worship, hospitals, police or fire stations (or other similar public service uses), or Units owned by or used by certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code. Exemptions granted by Declarant shall be binding on the Association.

8.9. Use and Consumption Fees.

The Association may offer services or facilities for which it does not recover the costs through assessments under this Article. The Board may charge use and consumption fees to any Person who chooses to use or participate in such services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

**PART FOUR: STILLWATER DEVELOPMENT**

*The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Stillwater and to accommodate changes in the Master Plan which inevitably occur as Stillwater matures.*

**Article IX Additional Rights Reserved to Declarant**

9.1. Annexation of Property.

Declarant may, from time to time, subject to this Declaration all or any portion of the property described in Exhibit "B" by recording a plat or Supplemental Declaration describing the property being subjected and specifying that such property is being made subject to this Declaration. Annexation pursuant to this Section shall not require the consent of any Person except the Owner of such property, if other than the Declarant.

Declarant's right to annex property pursuant to this Section expires when all property described in Exhibit "B" has been subjected to this Declaration, 20 years after this Declaration is recorded, or when, in its discretion, Declarant terminates such right, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any termination, transfer, or assignment of annexation rights shall be memorialized in a recorded instrument executed by Declarant.

Nothing in this Declaration shall require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

## 9.2. Withdrawal of Property.

During the Class "B" Control Period, Declarant reserves the right to amend this Declaration, to remove from the coverage of this Declaration any portion of Stillwater, provided such withdrawal does not materially adversely impact the common scheme of development established for Stillwater. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

## 9.3. Additional Covenants and Easements.

Declarant may subject any portion of Stillwater to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Specific Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If someone other than Declarant owns the property, then such owner's consent and execution of the Supplemental Declaration is required.

## 9.4. Marketing and Sales Activities.

Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Common Area and other property they own within Stillwater, such facilities, activities, and things as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units and property within Stillwater. Such permitted facilities, activities, and things shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, marketing and sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. Builder's rights under this Section are subject to Declarant's approval. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

## 9.5. Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Exhibit "B" property, the Common Area, and the Units as it deems appropriate in its discretion.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused as a result of their actions in connection with development of such property.

9.6. Right to Approve Changes in Community Standards.

No amendment to or modification of any Use Restrictions or Design Guidelines shall be effective without prior notice to and the written approval of Declarant during the Development and Sale Period.

9.7. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No general transfer or assignment of Declarant status shall be effective unless it is in a recorded instrument Declarant signs. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety; in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

9.8. Exclusive Rights to Use Name of Development.

No Person shall use the name "Stillwater", or any derivative of such name, or in logo or depiction, in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Stillwater " in printed or promotional matter where such term is used solely to specify that particular property is located within Stillwater and the Association may use "Stillwater " in its name.

9.9. Right to Use Common Area for Special Events.

During the Development and Sale Period, Declarant may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

- (a) the availability of the facilities at the time requested;
- (b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and
- (c) Declarant shall return the facilities and personal property used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign its rights to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

#### 9.10. Community Systems.

Declarant reserves for itself, its affiliates, successors, and assigns, a perpetual right and easement to install and operate within Stillwater such Community Systems as Declarant, in its discretion, deems appropriate to service the buildings and the structures within any Unit or other portion of Stillwater. Such right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. Neither Declarant nor any of its successors or assigns shall be liable for any interruption in Community Systems and services.

#### 9.11. Termination of Rights.

Rights granted under this Article shall terminate upon the earlier of (a) the period specified in the particular Section; (b) 20 years from the date this Declaration is recorded; or (c) Declarant's recording of a statement that all sales activity has ceased. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. Notwithstanding the above, Declarant reserves for itself and its Affiliates a perpetual, non-exclusive easement of access to and use of the Common Areas in connection with the marketing and sale of other properties in order to show Stillwater as an example of Declarant's projects. This Article shall not be amended without Declarant's written consent.

### PART FIVE: PROPERTY RIGHTS WITHIN STILLWATER

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to Stillwater.*

#### Article X Easements

##### 10.1. Easements in Common Area.

Declarant grants to each Owner a non-exclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

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- (a) the Governing Documents, including all of the Association's enforcement rights, and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association or in any lease granting the Association use rights in such property;
- (c) certain Owners' rights to the exclusive use of Limited Common Areas;
- (d) the Board's right to:
  - (i) adopt and enforce rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
  - (ii) rent or otherwise reserve any portion of any Common Area facilities on an exclusive or non-exclusive short-term basis to any Owner for use by such Owner and his or her family members and guests. Such use shall be subject to such rules and regulations as the Board may impose and may be made subject to the payment of a rental fee or security deposit in amounts the Board deems appropriate. The privilege of renting or otherwise reserving any portion of the Common Area on an exclusive or non-exclusive basis shall not extend to any Person occupying a Unit as a tenant unless the Board determines otherwise, which it shall not be obligated to do;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration; and
  - (iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Subject to reasonable regulation or limitation imposed by the Board and any limitations set forth above or elsewhere in the Governing Documents, (a) any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, and (b) an Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

#### 10.2. Easements of Encroachment.

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

### 10.3. Easements for Utilities and Other Infrastructure.

(a) Installation and Maintenance. Declarant reserves for itself, during the Development and Sale Period, and grants to the Association and all utility providers, easements (which shall be perpetual unless specifically limited and non-exclusive unless made exclusive) throughout Stillwater (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure, cable and other systems for sending and receiving data and/or other electronic signals, other Community Systems, drainage systems, and security and similar systems to serve Stillwater;

(ii) install walkways, pathways and trails, street lights, and signage on property which Declarant or the Association owns or within rights-of-way or easements reserved for such purpose on a plat or other recorded instrument;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described in Section 10.3(a)(i); and

(iv) access to read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on the payment of reasonable consideration.

(b) Specific Easements Declarant reserves for itself the non-exclusive right and power to grant and record other specific easements as may be necessary, in its discretion, in connection with the orderly development of Stillwater. Declarant shall give advance written notice to the Owner of any property to be burdened by any easement granted pursuant to this subsection (b). The location, but not the existence, of the easement shall be subject to the written approval of the burdened property's Owner, which approval shall not be unreasonably withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) above shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. 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.

### 10.4. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association, its licensees, agents, contractors, employees, and other designees, such easements rights over Stillwater as are necessary to enable the Association to fulfill its maintenance responsibilities under this Declaration. The Association shall also have the right,

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but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any Board member, by the Board's duly authorized agents and assignees, and by 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.

#### 10.5. Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Areas to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Common Areas; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any portion of the Stillwater as is reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not inside a dwelling or other structure) adjacent to or within 25 feet of bodies of water and wetlands within Stillwater, in order to (a) alter in any manner and generally maintain the bodies of water and wetlands within the Common Areas; and (b) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from his or her intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences or other occurrences not reasonably foreseeable or under the control of Declarant or such other Person.

#### 10.6 Easements for Cross-Drainage.

All portions of Stillwater shall be burdened with easements for natural drainage of stormwater runoff from other portions of Stillwater; provided, no Person shall alter the natural drainage on any Unit to increase materially the drainage of stormwater onto adjacent properties without the consent of the Owner(s) of the affected property, and the Board. In addition, Declarant's consent shall be required during the Development and Sale Period.

### **Article XI Limited Common Areas**

#### 11.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the primary or exclusive use or benefit of Owners and occupants of particular Units. By way of illustration and not limitation, Limited Common Areas may include entry features, landscaped areas and cul-de-sacs, and other portions of the Common Area serving a limited area. All costs associated with the Association's maintenance, repair, replacement, and insurance of a

Limited Common Area shall be a Specific Assessment allocated among the Owners to which the Limited Common Areas are assigned.

11.2. Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association, on the subdivision plat relating to such Common Area, or in a Supplemental Declaration; provided, during the Development and Sale Period, Declarant may assign the same Limited Common Area to, or otherwise permit use of such Limited Common Area by, Owners and occupants of additional Units.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Members representing a majority of the votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment also shall require Declarant's written consent.

**PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE STILLWATER**

*The growth and success of Stillwater as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within Stillwater and its neighbors, and protection of the rights of others who have an interest in Stillwater.*

**Article XII Dispute Resolution and Limitation on Litigation**

12.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association, and their respective officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), shall seek the amicable resolution of disputes within Stillwater without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 12.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within Stillwater, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

(c) Notwithstanding subsection (b), the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);

(iii) any suit that does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit which affects the material rights or obligations of a party who is not a Bound Party and who has not agreed to submit to the Section 12.2 procedures; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 12.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations for such period as may reasonably be necessary to comply with this Article.

#### 12.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. The

Board may appoint a representative to assist the parties in negotiating a resolution of the Claim if a Claimant requests the Board to do so in writing and includes a copy of the Notice.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 12.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity the Board designates (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Glynn County area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Bound Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

### 12.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless Members entitled to cast 75% of the total Class "A" votes in the Association first approve, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;

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(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

### Article XIII Mortgage Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in Stillwater.

#### 13.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its mortgage relates, thereby becoming an "Eligible Holder") will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of Stillwater or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant of the Unit which is not cured within 60 days.

#### 13.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any 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.

#### 13.3. Notice to Association.

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

#### 13.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a

written response from the Mortgagee within 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 XIV Disclosures and Waivers

##### 14.1. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Stillwater. The Association may, but shall not be obligated to, maintain or support certain activities within Stillwater designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within Stillwater, nor shall either 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 systems or measures, including security monitoring systems or any mechanism or system for limiting access to Stillwater, 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 designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Stillwater 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.

##### 14.2. Changes in Master Plan.

Each Owner acknowledges that Stillwater is a planned community, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, nor use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses or density of property within Stillwater, or (b) changes in the Master Plan as it relates to property outside Stillwater, without Declarant's prior written consent, which consent may be granted or withheld in Declarant's discretion.

##### 14.3. View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across the Units, any open space within Stillwater, or the marshland area will be preserved without impairment. Neither Declarant nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as may otherwise be required under a separate covenant or agreement. Declarant, and the Association shall have the right to add trees and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

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#### 14.4. Notices and Disclaimers as to Community Systems.

Any Community System and its providers, managers, and operators may be subject to federal, state, or municipal regulations, laws, and ordinances. Such regulations, laws, and ordinances may have a significant impact on certain aspects of the system including, but not limited to, the fees charged, the method of delivery, the rights of the system users, as well as the rights of the system providers or operators. These regulations and their impact are beyond the Association's and Declarant's control.

In recognition of the fact that interruptions in cable television and other Community Systems will occur from time to time, neither Declarant nor any of its successors or assigns shall be liable for, and no Community System user shall be entitled to, refund, rebate, discount, or offset in applicable fees, for any interruption in the Community Systems, regardless of whether or not such interruption is caused by reasons within the service provider's control.

Each Owner acknowledges and agrees that the Association, by virtue of contractual relationships with Community Systems providers, may gain access to information relating to individual use of the Community Systems, including account and content information. In recognition of this fact, each Owner waives any privacy rights he or she may have in such information and any claims against the Association, the Board, and Declarant relating to the acquisition of such information. Further, each Owner acknowledges and agrees that the acquisition of such information by the Association shall not create any duty on the part of the Association or Declarant to any Person to act in any manner with respect to such information.

Notwithstanding the above, or any other provisions in this Declaration, there is no guarantee or representation that any particular Community System will be made available.

#### 14.5 Use of Lake and Other Recreational Facilities.

Certain recreational facilities, including, but not limited to, a lake, tennis courts, and playground areas have been or shall be provided within Stillwater for the use and enjoyment of the Owners, their families, tenants, other occupants of a Unit, and the guests of any such Persons. The permitted uses of such facilities may include swimming, tennis, and non-motorized boating. Each Owner acknowledges that there are risks associated with the use of such recreational facilities, including the risk of bodily injury and death, and that all users of such facilities are solely responsible for their own personal safety in connection with such use and shall assume all risks associated with the use of such facilities.

The Association may, but is not obligated to, employ, implement, maintain, or otherwise provide or provide for, from time to time, measures designed to enhance the safety and the safe use of recreational facilities, including water features or facilities, within Stillwater. Each Owner acknowledges that any such safety measure shall not create a duty on the part of Declarant or the Association in favor of the users of the facility to provide for, insure, or guarantee the safety of such use. Each Owner acknowledges that implementing safety measures shall not in any way alter the risks assumed by each Owner,

his or her family members, tenants, other occupants of Owner's Unit, and guests of any such Persons, which risks shall continue to be assumed by the user of the facility, and that neither the Association nor Declarant or any Affiliate of Declarant shall be held liable for any loss or damage by reason of failure to provide adequate safety measures or ineffectiveness of safety measures undertaken.

#### 14.6. Water Management.

Each Owner acknowledges and agrees that the lake and other wetlands within or adjacent to Stillwater are not designed as aesthetic features and that the water level of the lake may rise and fall from time to time. During the Development and Sale Period, Declarant shall have the sole and absolute right to control the water level of the lake and to control the growth and eradication of plants, fowl, reptiles, animals, fish, and fungi in and on the lake. Declarant may assign all or any of such rights to the Association and, upon such assignment, the Association shall assume Declarant's rights and responsibilities in this regard. Each Owner agrees to release and discharge Declarant, and the Association, from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claims relating to fluctuations in the water elevations and maintenance of the lake.

### PART SEVEN: CHANGES IN STILLWATER

*Communities such as Stillwater are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Stillwater and its Governing Documents must be able to adapt to these changes while protecting the things that make Stillwater unique.*

#### Article XV Changes in Ownership of Units

Any Owner desiring to sell or otherwise transfer title to his or her 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 of title, 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 the Board receives such notice, notwithstanding the transfer of title.

#### Article XVI Changes in Common Area

##### 16.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total votes in the Association and of Declarant, during the Development and Sale Period) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to

written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking, Declarant, during the Development and Sale Period, and Members representing at least 75% of the total votes of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

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

#### 16.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

#### 16.3. Transfer or Dedication of Common Area.

During the Development and Sale Period, (i) Declarant may dedicate roadways within the Stillwater to Glynn County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity, or any private property owner as may be dictated by Glynn County; and (ii) the Association, upon Declarant's request and without a vote of the membership, shall dedicate roadways within the Stillwater to Glynn County, or to any other local, state, or federal governmental or quasi-governmental entity. In addition, the Association may dedicate portions of the Common Area to Glynn County, the State of Georgia, or to any other local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the approval of Members representing at least a majority of the total Class "A" votes in the Association, and the approval of Declarant during the Development and Sale Period; or

(b) if Limited Common Area, upon written approval of Owners of at least 75% of the Lots to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from

the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Lots to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

#### **Article XVII Amendment of Declaration**

##### **17.1. By Declarant.**

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant unilaterally may amend this Declaration for any purpose.

Thereafter, Declarant may unilaterally amend this Declaration 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, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) as necessary to clarify or correct technical, typographical, surveyor's, or scrivener's errors. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, after termination of the Class "B" Control Period, and until the Development and Sale Period expires, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no materially adverse effect upon the substantive rights of more than five percent (5%) of the Owners.

##### **17.2. 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 votes in the Association. In addition, Declarant's consent is required for any amendment during the Development and Sale Period.

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.

##### **17.3. Validity and Effective Date.**

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege)..

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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, 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.

17.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference, and this Article shall govern amendment of such exhibits. Exhibit "C" is incorporated by reference and may be amended pursuant to Section 17.1 and 17.2 or as provided in Article III. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration on the \_\_\_\_\_ day of December, 2002.

**DECLARANT: DKK DEVELOPMENT COMPANY, INC.**  
a Georgia corporation

By: [Signature]  
Name: M. Frank DeLoach, III  
Its: Chief Executive Officer

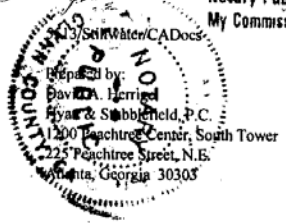
Attest: [Signature]  
Name: M. Frank DeLoach III  
Its: Secretary

Signed, sealed, and delivered this 11<sup>th</sup> day of, December, 2002, in the presence of:



[Signature]  
WITNESS

[Signature]  
NOTARY PUBLIC  
Notary Public, Glynn County, Georgia  
My Commission Expires January 10 2003.



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**EXHIBIT "A"**

**Land Initially Submitted**

All of those tracts or parcels of land shown and described on that certain Final Plat for Stillwater, recorded in Plat Drawer 28, Map 273, in the Office of the Clerk of the Superior Court of Glynn County, Georgia.

**EXHIBIT "B"****Land Subject to Annexation**

Any property adjacent to any portion of the real property described on Exhibit "A" or to such additional property as is made subject to the Declaration of Covenants, Conditions, and Restrictions for Stillwater in the future in accordance with its terms. Such adjacent properties shall include, but are not limited to the following property:

**ALL THAT TRACT, LOT, OR PARCEL OF LAND** situate, lying and being on St. Simons Island, Glynn County, Georgia, and being shown as **PARCEL "B-1" and PARCEL "B-2" CONTAINING 73.640 ACRES**, upon that certain plat of survey entitled "Survey for a Portion of the Wilson Creek Tract, Area =160.918 Acres", as prepared by Robert N. Shupe, G.R.L.S. No. 2224, for DKK Development Co., being dated April 12, 2002 and bearing Job #96530C; said plat being recorded in the Office of the Clerk of Superior Court of Glynn County, Georgia in Plat Drawer 28, as Map No.113-113 A-D. Reference is hereby made to said plat and to the record thereof for all further purposes of description and location.

**EXHIBIT "C"****Initial Use Restrictions**

The purpose of Design Guidelines and Use Restrictions is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities which fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IV, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it estop the Board from taking enforcement action in any appropriate circumstances.

Subject to the above, the following restrictions shall apply to all of Stillwater until such time as they are amended, modified, repealed, or limited pursuant to Article III of the Declaration.

1. **General.** Units within Stillwater shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for Declarant or its designees for use in connection with the marketing and sale of property within Stillwater's community, offices for any property manager which the Association retains, or business offices for Declarant, its designees, or the Association) consistent with this Declaration.

2. **Restricted Activities.** The following activities are prohibited within Stillwater unless the Board expressly authorizes them, and, if authorized, shall be subject to such conditions as the Board may impose:

(a) parking any vehicles on streets or thoroughfares, or parking commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, and stored or inoperable vehicles in places other than enclosed garages; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;

(b) raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be kept in a Unit. Dogs shall be kept on a leash or otherwise confined in a manner the Board requires whenever outside the dwelling. All pets shall be registered, licensed, and inoculated as required by law. The keeping of pets within Stillwater is subject to applicable Glynn County ordinances;

(c) activities which emit foul or obnoxious odors outside the Unit or create noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) activities which violate local, state, or federal laws or regulations; provided, the Board shall be under no obligation to take enforcement action in the event of a violation;

- (e) pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition outside of enclosed structures on the Unit;
- (f) noxious or offensive activities which in the Board's judgment tend to cause embarrassment, discomfort, annoyance, or nuisance to others;
- (g) outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;
- (h) use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be an unreasonable annoyance to others, as determined in the Board's discretion, except alarm devices used exclusively for security purposes;
- (i) use and discharge of firecrackers and other fireworks;
- (j) dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, marsh, lake, or elsewhere within Stillwater, except that fertilizers may be applied to landscaping on Units, provided care is taken to minimize runoff;
- (k) accumulation of rubbish, trash, or garbage except between regular garbage pick-ups, and then only in approved containers; such containers shall be screened from view from outside the Unit, except during regular pick-up periods;
- (l) obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;
- (m) subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and recorded, except that Declarant shall be permitted to subdivide or replat Units it owns and to create condominium units within any platted lots;
- (n) discharge of firearms; provided, the Board shall be under no obligation to take action to prevent or stop such discharge;
- (o) on-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV;
- (p) capturing, trapping, or killing wildlife within Stillwater, except in circumstances posing an imminent threat (i) to the safety of persons, or (ii) of damage to personal property within Stillwater;

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(q) activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Stillwater or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(r) conversion of any carport or garage to finished space for use as an apartment, an integral part of the Unit's living area, or for purposes other than parking vehicles and ancillary storage, without prior approval pursuant to Article IV. Garage doors shall be kept closed at all times except when entering, exiting, or otherwise actively using the garage; and

(s) any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the Design Guidelines and with approval pursuant to Article IV of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; and hedges, walls, animal pens, or fences of any kind.

3. Prohibited Conditions and Activities. The following shall be prohibited at Stillwater:

(a) plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may materially diminish or destroy the enjoyment of Stillwater;

(b) structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair; and

(c) any antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios), except those devices whose installation and use is protected under federal law or regulations (generally, certain antennae under one meter in diameter). Notwithstanding such protection, an application for such an antenna or other device must be submitted to the Reviewer for approval under Article IV of the Declaration and approval will be granted only if:

(i) First, the antenna or other device is designed for minimal visual intrusion (*i.e.*, is located in a manner that minimizes visibility from the street or an adjacent Unit and is consistent with the Community-Wide Standard); and

(ii) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (*i.e.*, without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

The Reviewer shall consider any such application on an expedited basis.

Notwithstanding the above, Declarant and/or the Association may erect an antenna, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Stillwater, should any master system or systems be used by the Association and require such exterior apparatus.

4. Use of Docks and Lakes and Other Water Bodies. The use of docks and lakes and other bodies of water within Stillwater for boating, fishing, or other purposes is subject to Board regulation. In any event, (i) fishing may be permitted only if required governmental licenses are obtained; (ii) the use of boats with internal combustion engines shall not be permitted on any lakes; (iii) no Person may dump any rocks, stones, trash, garbage, sewage, wastewater, rubbish, debris, ashes, or other refuse into any lake; and (iv) the use of or building of a dock or landing upon the lake, other than the community dock provided by Declarant, shall be prohibited.

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**EXHIBIT "D"**

**By-Laws of Stillwater Community Association, Inc.**

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**EXHIBIT "D"**

**BY-LAWS**

**OF**

**STILLWATER COMMUNITY ASSOCIATION, INC.**

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**BY-LAWS**  
**OF**  
**STILLWATER COMMUNITY ASSOCIATION, INC.**

**Article I Name, Principal Office, and Definitions**

1.1. Name.

The name of the corporation is Stillwater Community Association, Inc. (the "Association").

1.2. Principal Office.

The Association's principal office shall be located in Glynn County, Georgia. The Association may have such other offices as the Board may determine or as the Association's affairs require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Declaration of Covenants, Conditions, and Restrictions for Stillwater (as recorded and as may be amended, the "Declaration"), unless the context indicates otherwise.

**Article II Membership: Meetings, Quorum, Voting, Proxies**

2.1. Membership.

The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

### 2.3. Annual Meetings.

Commencing with the Association's first fiscal year, the Board shall set regular annual meetings so as to occur within 90 days before or after the close of the each fiscal year.

### 2.4. Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President or the Secretary to call a special meeting if so directed by Board resolution or upon a petition signed by Members representing at least 25% of the total Class "A" votes in the Association.

### 2.5. Notice of Meetings.

The Association's Secretary shall cause written notice stating the place, day, and hour of any Association meeting to be given in any manner permitted by Georgia law. Notice may be mailed, or sent by personal delivery, or, if permitted, notice may be posted in a conspicuous, prominent place within Stillwater, sent by facsimile, electronic mail, or other electronic communication device, or provided in such other manner which is reasonably calculated, as determined in the Board's discretion, to provide personal notice to the Members. Notice shall be given at least 10 but less than 60 days before the date of the meeting, by or at the direction of the President or the Secretary or the officers or Persons calling the meeting. Failure to receive actual notice of an Association meeting shall not affect the validity of any action taken at such meeting.

In the case of a special meeting or when Georgia law or these By-Laws require otherwise, the notice shall state the purpose or purposes for which the meeting is called. No business shall be transacted at a special meeting except as stated in the notice.

If posted, notice shall be deemed delivered when posted. Other notices shall be deemed delivered as provided in Section 6.5.

### 2.6. Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. A Member's attendance at such meeting shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless a Member raises an objection on the basis of lack of proper notice before the business is put to a vote.

### 2.7. Adjournment of Meetings.

If the Association cannot hold a meeting because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than

five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, the Association may transact any business which it might have transacted at the original meeting. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting, or if the date for the reconvened meeting is changed, notice of the time and place of the reconvened meeting shall be given to Members in the manner described in Section 2.5.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that at least a majority of the votes required to constitute a quorum approve any action taken.

#### 2.8. Voting.

Members shall have such voting rights as are set forth in the Declaration, which provisions are incorporated herein by this reference. Members may vote at a meeting by voice vote or ballot or may vote by mail without the necessity of a meeting, as determined by the Board; provided, the Board shall hold meetings when required by the Declaration, these By-Laws, or Georgia law. Votes for the election of directors shall be cast by written ballot. All Member votes cast at meetings are subject to the quorum requirements of Section 2.11. The Board may permit votes to be cast electronically (*i.e.*, via the Internet, intranet, or electronic mail) with sufficient verification of authenticity and if permitted by law.

#### 2.9. Proxies.

On any matter as to which a Member is entitled to cast the vote for his or her Unit, such vote may be cast in person or by proxy, subject to the limitations of Georgia law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws.

Every proxy shall be in writing specifying the Unit for which it is given, signed by the Member or his or her duly authorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover the entire vote which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Unit for which it was given, (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member, or (c) eleven months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Majority.

As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum.

Except as these By-Laws or the Declaration otherwise provide, the presence, in person or by proxy, of Members representing at least 10% of the Association's total Class "A" votes shall constitute a quorum at all Association meetings.

2.12. Conduct of Meetings.

The President or any designee the Board approves shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are recorded with the Association's records.

2.13. Action Without a Meeting.

Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote, if approved by Members holding at least a majority of the voting power sign a written consent specifically authorizing such action. The Secretary shall file such consents with the minutes of the Association along with the Secretary's certification that the subscribers to the consent constitute all of the Members entitled to vote. Such consent shall have the same force and effect as a vote of the Members at a meeting. Written notice of Member approval shall be given to all Members who have not signed a written consent. Actions approved in this manner shall take effect 10 days after written notice is given.

**Article III Board of Directors: Selection, Meetings, Powers**

A. **Composition and Selection.**

3.1. Governing Body; Composition.

The Board of Directors shall govern the Association's affairs. Each director shall have one equal vote. Except with respect to directors the Class "B" Member appoints, directors shall be Members or residents; provided, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any individual 18 years of age or older whose principal residence is a Unit within Stillwater. If a Member is not an individual, any officer, director, partner, or trust officer of such Member shall be eligible to serve as a director unless a written notice to the Association signed by such Member specifies otherwise; provided,

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no Member may have more than one such representative on the Board at a time, except in the case of directors the Class "B" Member appoints.

3.2. Number of Directors.

The Board shall consist of three directors, as provided in Sections 3.3 and 3.5. The initial Board shall consist of the three directors identified in the Articles of Incorporation.

3.3. Directors During Class "B" Control Period.

The Class "B" Member shall have complete discretion in appointing directors pursuant to Section 3.5. Such directors shall serve at the pleasure of the Class "B" Member.

3.4. Nomination and Election Procedures.

(a) Nomination of Directors. Except with respect to directors the Class "B" Member appoints, nominations for election to the Board shall be made in accordance with policies and procedures the Board establishes. Such policies and procedures may include, but are not limited to, permitting or requiring that nominations be made through a nominating committee, permitting "write-in" candidates, and permitting nominations from the floor.

If appointed, a nominating committee shall consist of a Chairman, who shall be a Board member, and three or more Members or representatives of Members. The nominating committee shall make as many nominations for election to the Board as it deems appropriate in its discretion, but in no event less than the number of positions to be filled as provided in Section 3.5.

All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Owner may cast the entire vote assigned to his or her Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5. Election and Term of Office.

Notwithstanding any other provision of these By-Laws:

(a) Within 90 days after the time that Class "A" Members other than Builders own 50% of the Units permitted under the Master Plan, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall elect one of the three directors (A director which the Class "A" Members elect is referred to as a "Class "A" Director."). The remaining two directors shall be the Class "B" Member's appointees.

The Class "A" Director shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b) below, a successor will be elected for a like term.

(b) Within 60 days after termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Members shall elect all of the three directors. As of the effective date of such election, the directors appointed by the Class "B" Member shall resign. Initially, two Class "A" Directors shall serve a term of two years and one Class "A" Director shall serve a term of one year, as such directors determine among themselves; provided, the Board may adjust term lengths in order to coincide with the Association's annual meetings.

Thereafter, upon the expiration of the term of office of each Class "A" Director, a successor shall be elected to serve a term of two years. The Class "A" Directors shall hold office until their respective successors have been elected.

### 3.6. Removal of Directors and Vacancies.

Any Class "A" Director may be removed, with or without cause, by the vote of Members representing a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, the Class "A" Members shall elect a successor to fill the vacancy for the remainder of the term of such director.

A majority of the directors at a regular or special meeting at which a quorum is present may remove any Class "A" Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or resides in a Unit owned by a Member who is so delinquent) in the payment of any assessment or other charge due the Association. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors the Class "B" Member appoints nor to any director serving as Declarant's representative. The Class "B" Member or Declarant shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

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## B. Meetings.

3.7. Organizational Meetings.

The Board shall hold an organizational meeting within 10 days following each annual membership meeting at such time and place, as the Board shall fix.

3.8. Regular Meetings.

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall hold at least two such meetings during each fiscal year with at least one during the first six months of the year and one during the second six months of the year.

3.9. Special Meetings.

The Board shall hold special meetings when called by written notice which the President, Vice President, or any two directors sign(s).

3.10. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall give notice to each director by (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the time set for the meeting. The Board shall give all other notices at least four days before the time set for a regular meeting, and at least 72 hours before the time set for a special meeting.

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

### 3.11. Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by means of conference telephone or similar communications equipment, through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence at such meeting.

### 3.12. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless these By-Laws or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, the Board may transact without further notice any business which it might have transacted at the original meeting.

### 3.13. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are recorded with the Association's records.

### 3.14. Open Meetings; Executive Session.

(a) Subject to Section 3.15, all Board meetings shall be open to all Owners; but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

### 3.15. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all of the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote. The Secretary shall file written consent or consents with the minutes of the Board's proceedings. The Board shall post a

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notice of the Board's action in a prominent place within Stillwater within three business days after obtaining all written consents to an action. Failure to give notice shall not render the action taken invalid.

C. Powers and Duties.

3.16. Powers.

The Board shall have all of the powers necessary for administering the Association's affairs and for performing all Association responsibilities and exercising all Association rights set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or Georgia law require to be done or exercised exclusively by the membership generally.

3.17. Duties.

The Board's duties shall include, without limitation:

- (a) adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's business judgment, in depositories other than banks;
- (e) opening bank accounts on the Association's behalf and designating the signatories required;
- (f) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (g) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(h) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(i) paying the cost of all services rendered to the Association;

(j) keeping books with detailed accounts of the Association's receipts and expenditures;

(k) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(l) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Stillwater; and

(m) indemnifying an Association director, officer, or committee member, or former Association director, officer, or committee member to the extent Georgia law, the Articles of Incorporation, or the Declaration requires such indemnity.

### 3.18. Compensation.

Directors shall not receive any compensation from the Association for acting as such unless Members representing a majority of the total Class "A" votes in the Association approve of compensation at a regular or special Association meeting. The Association may reimburse any director for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director made his or her interest known to the Board prior to entering into such contract and a majority of the Board, excluding the interested director, approved such contract.

### 3.19. Right of Class "B" Member to Disapprove Actions.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the Class "B" Member's sole judgment, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, interfere with development or construction of any portion of Stillwater, or diminish the level of services which the Association provides.

(a) Notice. The Association shall give the Class "B" Member written notice of all meetings and proposed actions approved at Association, Board, or committee meetings (or by

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written consent in lieu of a meeting). The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Class "B" Member has registered with the Association, which notice complies as to Board meetings with Sections 3.8, 3.9, 3.10, and 3.11 and which notice shall, except in the case of the regular meetings the Board holds pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) Opportunity To Be Heard. The Association shall give the Class "B" Member the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. The Class "B" Member may use this right to disapprove to block proposed actions, but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Class "B" Member shall also not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### 3.20. Management.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(e), and 3.17(g). The Board may employ Declarant or any affiliate of Declarant as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination which the Association may exercise with or without cause and without penalty, at

any time after termination of the Class "B" Control Period upon not more than 90 days' written notice.

### 3.21. Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accounting and controls should conform to generally accepted accounting principles;

(b) the Association's cash accounts shall not be commingled with any other accounts;

(c) the managing agent shall accept no remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(d) the managing agent promptly shall disclose to the Board any financial or other interest which he or she may have in any firm providing goods or services to the Association;

(e) commencing at the end of the fiscal year in which the first Unit is sold and closed, the Board shall prepare financial reports for the Association on at least a semi-annual basis containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution); and

(f) an annual report consisting of at least the following shall be available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal

year. An independent public accountant shall prepare such annual report on an audited, reviewed, or compiled basis, as the Board determines.

3.22. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain membership approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed five percent (5%) of the Association's budgeted gross expenses for that fiscal year.

3.23. Right To Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within or outside of Stillwater. Any common management agreement shall require the Board's consent.

3.24. Enforcement.

The Association shall have the power to enforce the Governing Documents and to impose sanctions for violations of the Governing Documents. To the extent the Declaration specifically requires, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the Board shall impose the proposed sanction as contained in the notice unless the alleged violator challenges the charges within the time required to request a hearing. If a timely request for a hearing is not made, the Board shall impose the sanction stated in the notice; provided the Board may, but shall not be obligated to, suspend any proposed sanction if the alleged violator cures the violation within the required period. Such suspension shall not constitute a waiver of the Board's right to sanction any Person's future violation of the same or other provisions and rules.

(b) Hearing. If the alleged violator requests a hearing within the required period, the Board shall hold the hearing in executive session. The Board shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, the Board shall cause proof of proper notice to be placed in the minutes of the meeting. Such proof shall be deemed adequate if the officer, director, or agent who delivered such notice enters into the minutes of the meeting a copy of the notice, together with a statement of the date and manner of delivery. The notice requirement shall be deemed satisfied if the alleged violator or its

representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, if the Declaration permits, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules, requiring persons violating rules relating to Common Area use to cease such violating use immediately) or, following compliance with the dispute resolution procedures set forth in Article XIII of the Declaration, if applicable, 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 procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

### 3.25. Board Standards.

In the performance of their duties, Association directors and officers shall be insulated from personal liability as provided by Georgia law for directors and officers of nonprofit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.

As defined herein, a director shall be acting in accordance with the business judgment rule so long as the director (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires* (i.e., outside the scope of the director's authority); (b) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in decisions and actions when a conflict exists; and (d) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs. A director acting in accordance with the business judgment rule shall be protected from personal liability.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

### 3.26. Board Training Seminar.

The Board may require that each Class "A" Director complete a board training seminar within such director's first six months of directorship. Any such seminar may address director

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responsibilities and duties. The seminar may be in live, video or audiotape, or other format, as the Board determines in its discretion.

#### **Article IV    Officers**

##### **4.1.    Officers.**

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be, Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same person may hold any two or more offices.

##### **4.2.    Election and Term of Office.**

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve for one-year terms or until their successors are elected.

##### **4.3.    Removal and Vacancies.**

The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

##### **4.4.    Powers and Duties.**

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

##### **4.5.    Resignation.**

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

#### 4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.

At least two officers, or such other person or persons as the Board may designate by resolution, shall execute all Association agreements, contracts, deeds, leases, checks, and other instruments.

#### 4.7. Compensation.

Officers' compensation shall be subject to the same limitations as directors' compensation under Section 3.18.

### Article V Committees

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

### Article VI Miscellaneous

#### 6.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

#### 6.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (the most current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law or the Governing Documents.

#### 6.3. Conflicts.

If there are conflicts among the provisions of Georgia law, the Declaration, the Articles of Incorporation, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and these By-Laws (in that order) shall prevail.

#### 6.4. Books and records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board,

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and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Stillwater as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

#### 6.5. Notices.

Except as the Declaration or these By-Laws otherwise provide, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or by private carrier; if sent by United States mail; or, if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile, or electronic mail. Notices shall be delivered or sent to the intended recipient as follows:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Notice sent in accordance with this Section shall be deemed to have been duly given and effective:

(i) if sent by United States Mail, when deposited with the U.S. Postal Service, correctly addressed, with first class postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation.

#### 6.6. Amendment.

(a) By Class "B" Member. Prior to the conveyance of the first Unit to a Class "A" Member other than a Builder, Declarant unilaterally may amend these By-Laws. Thereafter, the Class "B" Member or the Board unilaterally may amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; provided, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

In addition, so long as the Class "B" membership exists, the Class "B" Member unilaterally may amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the substantive rights of more than five percent (5%) of the Members.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the Association's total Class "A" votes, and the consent of the Class "B" Member, if such exists. 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 of Amendments. Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. 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 these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.