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Rebecca Keaton

Rebecca Keaton
Clerk of Superior Court Cobb Cty. Ga.

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After Recording Return to
MOORE INGRAM JOHNSON & STEELE, LLP
Attn Susan S Stuart
Emerson Overlook, Suite 100
326 Roswell Street
Marietta, Georgia 30060

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TERRACES AT DEPOT PARK TOWNHOMES**

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**STATE OF GEORGIA
COUNTY OF COBB**

THIS DECLARATION, made this 15th day of May, 2018, by ^{W&H} HARMONY VDL, LLC (hereinafter known as "Declarant") and W & H INVESTMENTS, LLC, FORTRESS BUILDERS, LLC, MARVIN WALDRIP REALTY CO and HAMPTON COMMUNITIES, LLC (hereinafter collectively referred to as "Other Owners").

WITNESSETH

WHEREAS, Declarant is the owner of these certain lots, tracts or parcels of land situated, lying and being in Land Lot 138, 20th District, Cobb County, Georgia and being more fully delineated by a plat for Terraces at Depot Park Townhomes, prepared by Atwell Group, David L. Anderson, Georgia Registered Land Surveyor Number: 3305, recorded on December 4, 2017 in Plat Book 277, Pages 31, Records of Cobb County, Georgia (the "Property"); and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values in Terraces at Depot Park Townhomes, and for the maintenance of property and improvements thereon, and to this end desires to subject the property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of the Property, and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values in Terraces at Depot Park Townhomes, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering the Common Area and improvements thereon and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Georgia, Terraces at Depot Park Townhomes Association, Inc., a non-profit corporation, for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, Declarant declares that the real property described above is and shall be held, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth

ARTICLE I DEFINITIONS

Section 1. "Additional Property" means the additional property which may be added to the Property and made subject to this Declaration pursuant to Article IX hereof. A description of the Additional Property is set forth on Exhibit "A" attached hereto and made a part hereof.

Section 2. "Architectural Control Committee" shall mean and refer to Declarant, or such entity or individual as it may appoint, until all Lots in Terraces at Depot Park Townhomes have been fully developed and permanent improvements constructed thereon and sold to permanent residents. At such time as all Lots are fully developed and permanent improvements constructed thereon and sold to permanent residents, the then current Declarant shall relinquish its right to appoint the Architectural Control Committee and said Committee shall be appointed by the Board.

Section 3. "Association" shall mean and refer to Terraces at Depot Park Townhomes Association, Inc., its successors and assigns.

Section 4. "Board" shall mean and refer to the Board of Directors of the Association.

Section 5. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners.

Section 6. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration and the By-laws and Articles of Incorporation of the Association

Section 7. "Declaration" shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth in this entire document, as may from time to time be amended.

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Section 8 "Declarant" shall mean and refer to Harmony VDL, LLC, or any successor in title or any successor in interest to said entity, to all or any portion of the Property then subject to this Declaration, provided in the instrument of conveyance to any such successor in title or interest it is stated that the rights of Declarant are conveyed therewith or if in any subsequent recorded instrument the then current Declarant conveys Declarant's rights to such successor-in-title

Section 9. "Lot" or "Unit" or "Townhome" shall mean and refer to residential lots/units/townhomes as shown on the recorded townhomes plat of the Property, as well as any future lots subject to the within covenants, conditions, restrictions and easements by the Declarant in Terraces at Depot Park Townhomes or any expansion thereof by Declarant.

Section 10 "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any lot which is part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 12. "Property" shall mean and refer to that certain real property described on the plat hereinabove referenced

Section 13 "Structure" shall mean and refer to:

(a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(b) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(c) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 13 applies to such change.

ARTICLE II
ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose, Powers and Duties of the Architectural Control Committee

(a) The purpose of the Architectural Control Committee is to assure that the installation, construction, or alteration of any Structure on any Lot is in accordance with the standards determined by the Architectural Control Committee. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any structure on any Lot and to publish rules and regulations. "Publish" for the purpose of this Declaration shall mean distribution of any and all rules and regulations, and changes thereto, to all Owners either via hand delivery, US Mail, electronic mail or a combination thereof.

(b) To preserve the architectural appearance of the neighborhood, no construction or placement of improvements of any nature whatsoever shall be commenced or maintained by any owner, his family, tenants, visitors, guests, servants, and agents with respect to the exterior of any house or with respect to any other portion of any lot or other parcel of land, including without limitation, the construction or installation of sidewalks, driveways, decks, patios, swimming pools, tennis courts, greenhouses, playhouses, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design, location, and appearance in relation to surrounding structures and topography by the Architectural Control Committee. The Architectural Control Committee shall have the sole discretion to determine whether the plans and specifications submitted for approval are acceptable and in compliance with the total scheme of the neighborhood. If same are not approved or disapproved within thirty (30) days from date submitted, then same shall be approved by default.

(c) The Architectural Control Committee understands that it is Declarant's intent for Terraces at Depot Park Townhomes that an Owner, if developmental layout of the Property allows, be allowed to fence in a private area to be located directly behind a Lot. Although all area outside of a Lot will be designated Common Area and conveyed to the Association, Owners shall have the right to submit to the Architectural Control Committee plans and specifications as set forth herein for the construction of such a private area. The Architectural Control Committee shall grant such requests unless topography or other developmental problems dictate otherwise. The Architectural Control shall in its sole discretion have the right to dictate size, fencing and all other matters related to the construction and maintenance of these private areas. The Owner of

the Lot which is served by the private area shall be responsible for all maintenance related to said area. Once constructed, the private area shall be for the exclusive use and benefit of the Owner of the Lot attached to Lot, its successors, assigns and invitees.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1 Membership. Every Owner of a Lot which is subject to this Declaration shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration and shall pass automatically to an Owner's successor-in-title to the Lot.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A: Every person who is an Owner, with the exception of the Declarant, shall be a Class A member and shall be entitled to one vote for each Lot owned. When more than one Person is a Class A member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and in an attempt by two or more of them to cast the vote of such Lot, such persons shall not be recognized and the vote of such Lot shall not be counted. The membership of Class A members shall automatically terminate upon the member's sale of his Lot. However, no termination of Class A membership shall affect such member's obligation to pay assessments, as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

Class B: The Class B member(s) shall be the Declarant and Declarant shall be entitled to three (3) votes for each Lot owned by Declarant or by a builder who holds a Lot for resale. A builder who holds Lots for resale shall not have voting rights as Declarant shall control such votes. At such time as any portion of the Additional Property is added to this Declaration, the Class B member votes shall increase according to the number of Lots included therein. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) The date on which seventy five percent (75%) of the Lots located on the Property and any Property which has been added to this Declaration by Declarant has been sold to individuals who reside in dwellings located on said Lots. In the event the Class B membership has ceased pursuant to this provision, and the Declarant adds Additional Property which causes

the number of Lots sold to individuals who reside in dwellings located on said Lots to be less than seventy five percent (75%) of the Lots located on the Property, and any Additional Property which has been added to the Declaration, then the Class B membership shall be revived, and the Class B member shall again have three (3) votes for each Lot owned.

- (b) 7 years from the date of this Declaration.
- (c) the surrender by Declarant of the authority to appoint and remove members of the Board of the Association by written instrument executed and recorded by Declarant; provided, however, that so long as any mortgagee of Declarant holds a security interest in any portion of the Property as security for a development loan to Declarant, the Class B member membership shall not terminate without the prior written consent of such mortgagee. If at the time of termination of the Class B membership Declarant still own any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A member.

ARTICLE IV PROPERTY RIGHTS

Section 1. Member's Easement of Enjoyment. Subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area [including, without limitation, the right of pedestrian and vehicular access, ingress and egress to and from his Lot over those portions of the Common Area from time to time designated for such purposes], which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) the right of the Association to charge a reasonable admission and other fees for the use of any recreational facility which may in the future be situated upon the Common Area.

(b) the right of the Association to suspend the voting rights and right to use of the Common Area by an Owner or his designee for any period during which any assessment against his Lot remains unpaid, and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) the right of the Association to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon, and, upon the assent of two-thirds of the Class A members and the Class B member, if any, to give as security a mortgage conveying all or any portion of the Common area.

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded

(c) the easements reserved in Article VII of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right or use and enjoyment in and to the Common Area and the improvements thereon to the members of his family, his tenants, guests and invitees, subject to such regulations and fees as may be established from time to time by the Association.

Section 3. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration.

Section 4. Access Easement. All Owners shall have an easement for access over and across any portion of the Common Area and the Property, exclusive of the individual Townhomes, for purposes of ingress/egress to and from each Owner's Townhome. Owner shall also have an easement over and across the Property to the driveway of each of the Townhomes for the limited benefit of the Owner whose Townhome is served by said driveway. The easements contained in this paragraph shall be for the benefit of Owners, their guests and invitees

ARTICLE V
COVENANT FOR MAINTENANCE AND
CAPITAL IMPROVEMENT ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) special assessments for capital improvements, (3) specific assessments; and (4) initiation fees, such assessments to be established and collected as hereinafter provided. The annual, specific and special assessments and initiation fees, together with interest thereon and costs of collection thereof, as hereinafter provided, including reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of the Lots and the costs and expenses incident to the operation of the Association, including without limitation the maintenance and repair of the Common Area and improvements thereon, the maintenance of services furnished by the Association (including, but not limited to, water/sewer and trash collection charges by a company chosen by the Association), the purchase of insurance by the Association, the repair and replacement of improvements on the Common Area, payment of all taxes, insurance premiums and all costs and expenses incidental to the operation and administration of the Association, and establishment and maintenance of a reasonable reserve fund or funds

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be one Two Hundred Dollars (\$ 200.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall

be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6 Uniform Rate of Assessment Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or annual basis.

Section 7 Date of Commencement of Annual Assessments. Due Dates The annual assessments provided for herein shall commence as to each Lot on the date that such Lot is conveyed to an Owner. Anything contained herein to the contrary notwithstanding, Declarant and any builder shall not be responsible for assessments on Lots not containing an occupied residence. Declarant shall, however, fund any deficit which may exist between assessments and the annual budget or pay the annual assessment and any special assessments due for as long as there is a Class B member of the Association. Declarant's obligation hereunder shall constitute a lien against all real property owned by Declarant and subject to this Declaration. The due dates shall be established by the Declarant until there is no longer a Class B member and then by the Board. The Association shall, upon demand, and for a reasonable charge, not to exceed Ten Dollars (\$10.00), furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a specified Lot is binding upon the Association as of the date of its issuance. If the Association fails to respond to any such request within ten (10) days after receipt of such request, any lien then outstanding shall be deemed to have been extinguished. All such requests shall be sent to the Association in the same manner as provided for notices.

Section 8. Effect of Nonpayment of Assessments Remedies of the Association Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to take the necessary steps to terminate water service to the delinquent Owner and any delinquent assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment and may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to purchase any lot at any sale and convey the same for the purpose of protecting its lien. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, abandonment of his Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of action on lien.

Section 9. Subordination of Lien to First Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed or security deed representing a first lien on said property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Area; and (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens except as otherwise set forth herein.

Section 11. Effect of Delinquency on Class A Members. Notwithstanding all of the foregoing rights of the Association, the Association shall have the further right to prohibit a delinquent Class A member, such delinquency being as herein defined, from using in any manner the Common Area.

Section 12. Initiation Fee. There shall be owed to the Association a nonrefundable initiation fee at each closing of a Lot. The initiation fee shall be Five Hundred Dollars (\$ 500.00) per Lot for all Lots. Each Owner understands that the initiation fee as set forth herein shall be paid to the Association at the initial closing of the Lot and at each subsequent closing of that Lot so that the Association receives an initiation fee each time a Lot is sold.

Section 13. Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received, and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

ARTICLE VI
MAINTENANCE

Section 1 Association's Responsibility Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area. The Association's responsibility with respect to the Common Area shall be deemed to include, but shall not be limited to, the maintenance, repair and replacement of (i) all monuments and signage, if any, and buildings and other improvements, if any, situated within the Common Area, (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area, (iii) any private roads, (iv) the private areas referenced in Article II (c), (v) all lawns, trees, shrubs, hedges, grass, conservation easement areas, buffers, fencing, other landscaping and all detention ponds/stormwater infrastructures situated within or upon the Common Area. The Association will cut, edge, weed, apply chemicals and fertilize, trim shrubs and replace pine straw on all of the Property.

From the time that the Common Elements or any portion thereof, is opened and put into use for the enjoyment of Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Elements or any of its improvements, fixtures and facilities, inasmuch as the control, operation, management, use and enjoyment, of the Common Elements shall be within, under and subject to the Association and not Declarant. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of any facilities located on the Common Elements to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and thereof; and all users of, and visitors to, the Common Elements and its improvements and facilities shall use, enjoy and visit, the same at their own risk and peril.

Section 2 Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all Structures, driveways and decks (even though located on Common Area) and other improvements that exclusively serve a Lot, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community Wide Standard and this Declaration. Further, Owner shall be responsible for any AC units, utility lines or other equipment which exclusively serve a Lot and which may or may not be physically located on said Lot. The Community Wide Standard as used in this subparagraph shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing in Terraces at Depot Park. Such standard may be more specifically determined by the Board of Directors of the Association but must be consistent with the Community-Wide Standard originally established by the Declarant. In the event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice

shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot. The remedies provided in the Section shall be in addition to, and not in lieu of, other remedies provided in this Declaration for a violation of the Declaration.

ARTICLE VII EASEMENTS

Section 1. Utility Easements. There is hereby created in favor of the Association an easement upon, across, over, through and under all of the Common Area for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area and the Lots, as provided herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the property except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, Declarant or the Association shall have the right to grant such easement on the Common Area without conflicting with the terms hereof.

Section 2. Easement for Declarant. Declarant hereby reserves for themselves, their successors and assigns, the following easements and rights-of-way in, on, over, under and through any part of the Property owned by Declarant and the Common Area for so long as Declarant owns any Lot primarily for the purpose of sale:

- (a) For the erection, installation, construction and maintenance of wires, lines and conduits, and necessary to proper attachments in connection with the transmission of electricity, gas, water, telephone, community antennae, television cables and other utilities,
- (b) For the construction of improvements on the Lots;
- (c) For the installation, construction and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility;

(d) For the use of the Common Area and any sales office, model units and parking spaces in connection with its efforts to market Lots;

(e) For the maintenance of such other facilities and equipment as in the sole discretion of Declarant may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots

Section 3. Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including any management company retained by the Association, to enter upon the Common Area and the Lots to perform their respective duties.

Section 4. Electrical Easements. Owners understand that as a matter of development requirements, Declarant installed electrical meters for all Townhomes in a given building on an end Unit. The electrical cables/wiring which provide electrical power to the Townhomes in a given building run under said building, coming up in the floor of the Townhome the wiring serves. Declarant hereby establishes for the benefit of each Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving the Units and situated in, on or under any other Unit or the Common Property. The Board of Directors, and without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements, and other easements, permits or licenses necessary or desirable for the proper maintenance or operation of the Property under, through, or over the Units and/or the Common Property as may be reasonably necessary to or desirable for the ongoing operation of the Property. In the event that any Owner desires access to another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such Unit and the property of the Owners and Occupants thereof and damage shall be repaired by the Person causing the damage at its sole expense. The easements granted in this Section are a vested property right, shall remain in effect in perpetuity and shall not be amended as set forth in this Declaration.

ARTICLE VIII
GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

Section 1. Residential Use. All Lots shall be restricted exclusively to single-family residential use. The use of a portion of a dwelling as an office by an Owner shall not be

considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. The use of a dwelling or a portion thereof for business meetings, entertainment, or the enjoyment or business of the Owner's employees, trustees, agents, clients, or customers shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. Nothing herein shall be construed to prohibit or prevent Declarant or any builder of residences on the Property from using any Lot owned by Declarant or such builder for the purpose of carrying on business related to the development and sale of Lots and/or new homes on Lots.

Section 2. Common Area. The Common Area shall be used by the Owners and their agents, servants, tenants, family members, invitees and licensees for such other purposes as may be authorized by the Association.

Section 3. Debris. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of an Owner's Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property. Except on designated garbage days, all garbage cans shall be stored in such a manner as to remain invisible from the streets located on the Property.

Section 4. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot except for the initial construction of residences and development of the Property.

Section 5. Signs.

(a) No signs whatsoever shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings,
- (ii) not more than one "For Sale" or "For Rent" sign, provided, however, that in no event shall any such sign be larger than six (6) square feet in area; and
- (iii) directional signs for vehicular or pedestrian safety,
- (iv) entry signs used to identify subdivision, marketing signs used to advertise subdivision by Declarant and in conjunction therewith brochure holders.

(b) Following the consummation of the sale of any Lot, the sign located thereon shall be removed immediately.

Section 6. Fences. No fences may be placed on the Property.

Section 7 Recreational Vehicles, Trailers, etc. No recreational vehicles, trailers, campers, trucks (except pickups and vans), travel buses or any such equipment shall be parked on the Property. No inoperative vehicle shall be parked on the Property for any period of time in excess of seven (7) days. No owners or occupants of any lot or parcel of land shall repair or restore any vehicle of any kind upon any lot or upon any parcel of land, except for emergency repairs, and then only to the extent necessary to enable the movement thereon to a proper repair facility

Section 8. Recreational Equipment. No recreational and playground equipment shall be placed or installed on the Property.

Section 9. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in Terraces At Depot Park Townhomes shall be undertaken and completed in accordance with the following conditions:

(a) All construction shall be carried out in compliance with the laws, code, rules, regulations and orders of all applicable governmental agencies and authorities.

(b) Concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot.

(c) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.

(d) No exposed above-ground tanks for the storage of fuel or water or any other substance shall be located on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.

(e) Guest only parking shall be provided on the Property to be used on a first come, first served basis. Owners shall not be allowed to utilize designated guest parking. The Association shall adopt rules and regulations governing the amount of time a guest can utilize a guest parking space/spaces. After a twenty four hour written warning placed on an offending vehicle, the Association shall have the authority to tow said vehicle.

(f) At no time shall any garage located on a Lot be converted to living space. Except for house guest staying two (2) weeks or less, no more than one car shall be parked in the driveway of any Unit.

(g) All garages must have doors, and each garage door must be coordinated in design and color with the dwelling to which it is appurtenant. ~~Both garages must be occupied by Owner's motor vehicles before a third vehicle is allowed to be parked in the driveway~~

(h) Any construction on a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot shall be responsible for any damage to any curbing or street resulting from construction on such Lot; repairs of such damage must be made within thirty (30) days after completion of such construction

(i) Any change in paint color to any structure must be approved by the Architectural Control Committee.

Section 10. Animals. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No animals shall be boarded outside of the dwelling structure.

Section 11. Accessory Structures Installed by Declarant. Entry signs, fences, walls and landscaping installed by Declarant on the Property shall be and are hereby dedicated to the use and benefit of all owners, and shall not be removed or altered without a two-third (2/3) vote of the Association Class A members.

Section 12. Miscellaneous Fixtures. To provide a neat, attractive and harmonious appearance throughout the neighborhood, no awnings, shades or window boxes shall be attached to, or hung or used on the exterior of, any window or door of any house, and no railings, fences, walls, antennae or satellite dishes shall be installed or constructed upon any lot or parcel of land without the prior written consent of the Architectural Control Committee. Further, no foil or other reflective material shall be used on any windows or sunscreens, blinds, shades or for any other purpose, nor shall any window mounted heating, air-conditioning or fan units be permitted. Any window treatments visible from the exterior of the Townhome shall be white or off-white. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained upon any lot or parcel of land, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall.

Section 13. Antennae. No television antenna, radio receiver, satellite dish or other similar device shall be attached to or installed on any portion of the Property, unless said antenna, radio receiver, satellite dish or other device is one meter or less in diameter and is installed on the rear roof slope of the residence, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Subdivision; provided, however, that the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio or other similar systems

PLEASE
REZ COMMIT
32 VOTE
4 OPPOSE
4 ABSTAIN
07.30.02
M. [Signature]
07.24.06

within the Subdivision, and should cable television services be unavailable and adequate television reception not be otherwise available, then an Owner may make written application to the Architectural Control Committee for permission to install a television antenna. The location of the placement of a satellite dish that is one meter or less in diameter shall be subject to the approval, **in writing**, of the Architectural Control Committee except that said committee must allow a placement at a location on an Owner's Lot where reception can reasonably be obtained.

Section 14 Leasing. At no time shall more than 10% of the total number of homes located on the Property be leased at one time. Leases shall be for a minimum of one (1) year. Owner must request and receive approval from the Association prior to entering into a lease. On or before one (1) week after a lease is executed, the name of the Lessee, the Owner's current mailing address, and the expiration of the lease shall be provided to the Association in writing.

Section 15. Traffic Regulations. All vehicular traffic on the private streets and roads in Terraces At Depot Park Townhomes shall be subject to the provisions of the laws of the State of Georgia and Cobb County concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets, within Terraces At Depot Park. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Georgia and Cobb County and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Drivers licensed to operate motor vehicles by the State of Georgia or by any other state in the United States may operate any type of motor vehicle within Terraces At Depot Park Townhomes. All vehicles of any kind and nature which are operated on the streets of Terraces At Depot Park Townhomes shall be operated in a careful, prudent, safe, and quiet manner, and with due consideration for the rights of all residents of Terraces At Depot Park Townhomes.

Section 16. Insurance. Owners shall be responsible for maintaining full homeowners insurance on the Townhome in its entirety. In the event a Townhome is damaged, Owners agree to perform any repairs in a reasonable amount of time and communicate with the Association on the timing of said repairs.

Section 17. Rules and Regulations. The Association shall have the authority to make and enforce rules and regulations governing the Property which don't conflict with the provisions of this Declaration.

ARTICLE IX
ANNEXATION

Section 1. Submission of Additional Property Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Section 2 of this Article, to submit all or portions of the Additional Property to this Declaration and thereby to cause the Additional Property, or such portions thereof, to become part of the Property. This option may be exercised by the Declarant in accordance with the conditions and limitations set out in Section 2 of this Article, which are the only conditions and limitations on such right.

Section 2. Conditions of Annexation. Any Annexation as permitted by Section 1 of this Article shall be in accordance with the following terms and conditions.

(a) The option to submit portions of the Annexation Property may be exercised at any time and from time to time until seven (7) years from the date this Declaration is recorded, provided, however, that the Owners of Lots to which two-thirds of the Class A votes in the Association appertain, exclusive of any vote or votes appurtenant to Lots then owned by Declarant, may consent to the extension of such option by vote taken not more than one (1) year prior to the date upon which such option will expire.

(b) The legal description of the Additional Property is set forth in Exhibit "B". Portions of the Additional Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which any such portions may become part of the Property.

(c) All Lots created on portions of the Additional Property which are added to the Property will be restricted exclusively to residential use, in accordance with Article VI of this Declaration.

(d) The option reserved by Section 1 of this Article may be exercised by the Declarant or Successor Declarant alone (without the consent of the Association or any Owner) by the execution by the Declarant of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located therein, and an identifying number for each such Lot. Any such amendment shall expressly submit that portion of the Additional Property which is to become part of the Property from time to time, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(e) In addition to the procedure outlined in sub-paragraph (d) above, the option reserved by Section 1 of this Article may be exercised with respect to any portions of the Additional Property, notwithstanding that such Additional Property may be owned by persons, including any individual, individuals, corporations, partnerships or any other type of entity, other than Declarant. Declarant shall exercise this option by an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located thereon, and an identifying number for each such Lot. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to a Declaration, (citing the specific Deed Book and Page in which such Declaration is recorded) executed by the owner or owners thereof submitting such Additional Property to this Declaration. Upon the exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(f) From and after the date of annexation of any portion of the Additional Property, each Lot so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges accorded every other Lot previously comprising part of the Property. Upon annexation of each portion of the Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owners, the covenants to maintain the Common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of this Additional Property which is then the subject of annexation.

(g) It is understood that if Terraces at Depot Park Townhomes is approved for funding of individual Lot loans by the Federal Housing Administration and/or the Veterans Administration, any variance from the plan of Annexation initially approved by them may jeopardize future funding unless such variance is approved prior to implementation.

(h) Each Owner, by acceptance of a deed to a Lot in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article IX.

Section 3. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Article for the purpose of removing any portion of Terraces At Depot Park Townhomes then owned by

Declarant, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for Terraces at Depot Park Townhomes, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Terraces at Depot Park Townhomes

ARTICLE X
GENERAL PROVISIONS

Section 1 Enforcement

(a) The Association, the Architectural Control Committee, the Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter

(b) The Architectural Control Committee shall have the right of abatement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any restriction contained in this Declaration or any published rule and regulation within twenty (20) days after the mailing of written notice of such violation or breach. The right of abatement means the right of the Architectural Control Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation or breach exists, and to take such action or actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions

Section 2. Fines. The Board of Directors may impose fines or other sanctions, for violations of this Declaration and violations of any published rules and regulations, said fines to be collected as provided herein for the collection of assessments

Section 3. The Board shall have the right to record in the appropriate land records a notice of violation of this Declaration, Bylaws or any rules, regulations, use restrictions, or design guidelines promulgated by the Association and to assess the cost of recording and removing such notice against the foregoing.

Section 4. Severability If any provision of the Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 5 Headings The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles and sections.

Section 6. Duration The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless at least two-thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument in which said covenants and restrictions are modified in whole or in part, which instrument is filed of record in the appropriate county.

Section 7 Rights and Obligations Each grantee of the Declarant and Owners, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits, privileges of every character hereby imposed shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in the Property or any portion thereof, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 8. Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his Lot or at such other address as hereinafter provided. Notices to the Association or Board shall be in writing and shall be addressed to the President of the Association at his/her address which presently is:

Harmony VDL, LLC
701 Whitlock Avenue
Suite K-46
Marietta, GA 30064

Hampton Communities, LLC
701 Whitlock Avenue
Suite K-46
Marietta, GA 30064
Attn: Skip Harper

Fortress Builders, LLC
701 Whitlock Avenue
Suite K-46
Marietta, GA 30064

Marvin Waldrip Realty Co
540 Powder Springs Street
Suite D-25
Marietta, GA 30064

W & H Investments, LLC
701 Whitlock Avenue
Suite K-46
Marietta, GA 30064

or at such different address or addresses as reflect their proper address. Any Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered upon mailing by United States registered or certified mail or when delivered in person.

Section 9. Intentionally Omitted.

Section 10. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant:

(a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith;

(b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;

(c) If such amendment is required to obtain the approval of this Declaration by an institutional lender, such as a bank, savings and loan association or life insurance company, or by a governmental lender or purchaser of mortgage loans, such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or

(d) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, the Federal Housing Administration or a reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration
Further, this Declaration may be amended at any time and from time to time by an

agreement signed by at least sixty-seven (67%) percent of the Owners of Lots, provided, however, such amendment by the Owners shall not be effective unless also signed by Declarant, if Declarant is the owner of any real property then subject to this Declaration. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot or the Common Area affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Every purchaser or grantee of any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section, and

(e) Notwithstanding the foregoing, or any other provision of this Declaration, for so long as there is a Class B member, the following matters shall require the approval of the Federal Housing Administration or the Veterans Administration Annexation of additional properties pursuant to a plan not previously approved, dedication of Common Area, and amendment of this Declaration


IN WITNESS WHEREOF, HARMONY VDL, LLC, W & H INVESTMENTS, LLC, FORTRESS BUILDERS, LLC, MARVIN WALDRIP REALTY CO and HAMPTON COMMUNITIES, LLC have caused this Declaration to be executed in its name and by its duly authorized officer and its seal affixed on the day and year first above written.

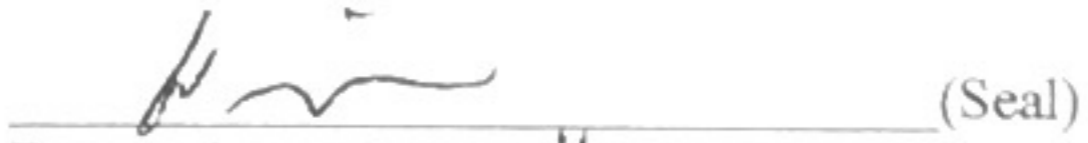
DECLARANT:

HARMONY VDL, LLC

Signed, Sealed and Delivered in the presence of


Witness


Notary Public

 (Seal)
By: William Harper
Title: member

[Notary Seal]

[Signatures continued on next page]



OTHER OWNERS.

W & H INVESTMENTS, LLC

Signed, Sealed and Delivered in the presence of

[Signature]
Witness

Michael Hester
Notary Public
[Notary Seal]

[Signature] (Seal)
By: William Harper
Title: member

Signed, Sealed and Delivered in the presence of:

[Signature]
Witness

Michael Hester
Notary Public
[Notary Seal]

MARVIN WALDRIP REALTY CO

[Signature] (Seal)
By: Steve C. Waldrip
Title: President

Signed, Sealed and Delivered in the presence of:

[Signature]
Witness

Michael Hester
Notary Public
[Notary Seal]

HAMPTON COMMUNITIES, LLC

[Signature] (Seal)
By: William Harper
Title: member



EXHIBIT "A"

Legal Description of Additional Property

Cobb County Tax Parcels

Z0013800600	1.4 acres
Z0013800500	1.2 acres
Z0013802100	.9 acres
Z0013800530	.7 acres
Z0013800540	83 acres