

**BK:18553 PG:325-424**  
Filed and Recorded  
Oct-13-2021 10:23 AM  
DOC# 2021 - 042736  
SABRIYA HILL  
CLERK OF SUPERIOR COURT  
HENRY COUNTY, GA  
Participant ID: 1358594985

This document was prepared by  
and upon recording shall be returned to:  
Rachel E. Conrad, Esq.  
Dorough & Dorough, LLC  
160 Clairemont Avenue, Suite 650  
Decatur, Georgia 30030  
(404) 687-9977

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
HAMPTON PRESERVE**

**TABLE OF CONTENTS**

**Article I DEFINITIONS..... 2**

1.1 Approved Builder ..... 2

1.2 Area of Common Responsibility..... 2

1.3 Articles of Incorporation or Articles ..... 2

1.4 Association ..... 2

1.5 Board of Directors or Board ..... 2

1.6 By-Laws ..... 2

1.7 Common Area..... 3

1.8 Common Expenses..... 3

1.9 Community ..... 3

1.10 Community-Wide Standard ..... 3

1.11 Declarant..... 3

1.12 Gate System ..... 3

1.13 General Assessment ..... 4

1.14 Governing Documents..... 4

1.15 Member ..... 4

1.16 Mortgage..... 4

1.17 Mortgagee..... 4

1.18 Owner..... 4

1.19 Person..... 4

1.20 Plat..... 4

1.21 Record, Recorded, or Recording ..... 4

1.22 Special Assessment ..... 4

1.23 Specific Assessment ..... 4

1.24 Supplemental Declaration..... 5

1.25 Unit..... 5

1.26 Use Restrictions and Rules..... 5

**Article II PROPERTY RIGHTS..... 6**

2.1 Common Area..... 6

2.2 No Partition..... 7

2.3 Condemnation..... 7

**Article III MEMBERSHIP AND VOTING RIGHTS..... 7**

3.1 Function of Association..... 7

3.2 Membership..... 8

3.3 Voting..... 8

**Article IV RIGHTS AND OBLIGATIONS OF ASSOCIATION ..... 9**

4.1 Common Area..... 9

4.2 Personal Property and Real Property for Common Use..... 9

4.3 Enforcement..... 10

4.4 Implied Rights; Board Authority..... 11

4.5 Governmental Interests..... 11

4.6 Indemnification..... 12

4.7 Safety and Security..... 12

**Article V MAINTENANCE..... 13**

5.1 Association’s Responsibility..... 13

5.2 Exterior Unit Maintenance..... 16

5.3 Landscape Maintenance to Common Area..... 18

5.4 Failure of Owner to Maintain..... 18

5.5 Standard of Performance..... 19

5.6 Party Walls and Fences..... 19

5.7 Limitation of Liability..... 19

5.8 Measures Related to Insurance Coverage..... 20

5.9 Gate System..... 21

**Article VI INSURANCE AND CASUALTY LOSSES..... 22**

6.1 Association Insurance..... 22

6.2 Insurance on Units; Damage to Units..... 24

6.3 Damage and Destruction..... 25

6.4 Insurance Deductible..... 26

**Article VII ANNEXATION AND WITHDRAWAL OF PROPERTY..... 26**

7.1 Annexation Without Approval of Membership ..... 26

7.2 Annexation With Approval of Membership..... 27

7.3 Withdrawal of Property ..... 27

7.4 Additional Covenants and Easements..... 27

**Article VIII ASSESSMENTS ..... 28**

8.1 Creation of Assessments ..... 28

8.2 Declarant’s Obligation for Assessments; Budget Deficit During Declarant  
Control..... 29

8.3 Computation of Budget and General Assessments..... 29

8.4 Reserve Budget and Capital Contribution ..... 30

8.5 Special Assessments..... 31

8.6 Specific Assessments..... 31

8.7 Nonpayment of Assessments; Lien for Assessments..... 32

8.8 Date of Commencement of Assessments..... 33

8.9 Failure to Assess ..... 33

8.10 Exempt Property..... 34

8.11 Estoppel Letter..... 34

**Article IX ARCHITECTURAL STANDARDS ..... 34**

9.1 General..... 34

9.2 Architectural Review ..... 35

9.3 Guidelines and Procedures..... 36

9.4 No Waiver of Future Approvals ..... 37

9.5 Variance ..... 37

9.6 Limitation of Liability..... 38

9.7 Enforcement..... 38

**Article X USE RESTRICTIONS AND RULES..... 39**

10.1 Plan of Development; Applicability; Effect..... 39

10.2 Authority to Promulgate Use Restrictions and Rules ..... 40

10.3 Owners' Acknowledgement ..... 41

10.4 Rights of Owners ..... 41

**Article XI EASEMENTS..... 43**

11.1 Easements of Encroachment and Overhang ..... 43

11.2 Easements for Utilities - Association ..... 43

11.3 Easements for Utilities - Association ..... 44

11.4 Easements for Drainage..... 45

11.5 Easement for Maintenance - Association ..... 45

11.6 Easement for Maintenance – Unit Owner ..... 45

11.7 Easements to Serve Additional Property ..... 46

11.8 Easement for Right of Entry..... 46

11.9 Landscaping and Signage Easements ..... 46

11.10 Easement to Inspect and Right to Correct..... 47

11.11 Construction and Sale Easement..... 47

11.12 Easement for Private Streets, Sidewalks and Signs ..... 48

**Article XII MORTGAGEE PROVISIONS ..... 48**

12.1 Audit ..... 49

12.2 No Priority ..... 49

**Article XIII DECLARANT AND APPROVED BUILDER RIGHTS ..... 49**

**Article XIV DISPUTE RESOLUTION AND LIMITATION ON LITIGATION ..... 50**

14.1 Agreement to Avoid Litigation ..... 50

14.2 Claims ..... 51

14.3 Mandatory Dispute Resolution Procedures for Claims..... 51

14.4 Allocation of Costs of Resolving Claims..... 53

14.5 Enforcement of Resolution..... 53

Article XV    **GENERAL PROVISIONS** ..... 54

15.1    Duration ..... 54

15.2    Amendment ..... 54

15.3    Severability ..... 56

15.4    Litigation ..... 56

15.5    Cumulative Effect; Conflict ..... 56

15.6    Compliance ..... 56

15.7    Notice of Sale or Transfer of Title ..... 56

15.8    Exhibits ..... 57

15.9    Nondiscrimination ..... 57

15.10    Notices ..... 57

**- TABLE OF EXHIBITS -**

<b><u>Exhibit</u></b>	<b><u>Subject Matter</u></b>
"A"	Land Initially Submitted to the Declaration
"B"	Land Subject to Annexation
"C"	Initial Use Restrictions and Rules
"D"	By-Laws of Hampton Preserve Townhome Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR HAMPTON PRESERVE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HAMPTON PRESERVE ("Declaration") is made as of the date set forth on the signature page hereof by **Forestar (USA) Real Estate Group, Inc.**, a Delaware corporation (hereinafter referred to as "Declarant").

Declarant is the owner of the real property described in Exhibit "A," which is attached hereto and incorporated by reference. By this Declaration, Declarant imposes upon the Community mutually beneficial restrictions under a general plan of improvement for the benefit of the owners in the Community, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Community. In furtherance of such plan, Declarant has caused the Hampton Preserve Townhome Association, Inc. to be formed as a Georgia nonprofit corporation to own, operate, and maintain Common Area and to administer and enforce the provisions of the Governing Documents, as such terms are defined below.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property described on Exhibit "B" hereto that may be subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Community, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Community.

This document does not and is not intended to create a condominium within the meaning of the Georgia Condominium Act, O.C.G.A. Section 44-3-70, *et seq.*, and does not submit the property described herein to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.*

THIS DECLARATION DISCLOSES SOME IMPORTANT INFORMATION ABOUT THE COMMUNITY FOR THE BENEFIT OF PROSPECTIVE PURCHASERS OF REAL PROPERTY LOCATED IN THE COMMUNITY. EACH OWNER, BY ACCEPTING A DEED TO PROPERTY IN THE COMMUNITY, ALSO ACCEPTS AND AGREES TO THE COVENANTS AND RESTRICTIONS SET FORTH IN THIS DECLARATION.

**Article I**  
**DEFINITIONS**

The terms in this Declaration and the attached exhibits and other Governing Documents shall generally be given their commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Approved Builder": means **D.R. Horton, Inc.**, a Delaware corporation and any home builder approved by Declarant for the construction of houses on Units which home builder has been granted rights of Approved Builder hereunder by the Declarant in a written instrument. Declarant may grant rights of Approved Builder to one or several home builders. Rights of Approved Builder hereunder shall apply only to the Units within the Community which are acquired by such Approved Builder.

In the event that rights of Declarant are assigned to an Approved Builder pursuant to a Recorded assignment of Declarant rights or similar document, all rights granted to such Approved Builder hereunder shall cease and such Approved Builder shall have the right to exercise all rights of the Declarant arising under this Declaration pursuant to such Recorded assignment or similar document.

1.2. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contract, or agreement.

1.3. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Hampton Preserve Townhome Association, Inc., as the same may be amended from time to time.

1.4. "Association": Hampton Preserve Townhome Association, Inc., a Georgia non-profit corporation, its successors or assigns.

1.5. "Board of Directors" or "Board": The body responsible for the administration, operation and management of the Association, appointed or elected as provided in the By-Laws, and generally serving the same role as the board of directors under Georgia corporate law.

1.6. "By-Laws": The By-Laws of Hampton Preserve Townhome Association, Inc., attached as Exhibit "D" hereto, as they may be amended from time to time.

1.7. "Common Area": All real and personal property, including, without limitation, easements and other interests therein and the facilities and improvements located thereon, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.8. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association in a given year, including any reasonable reserve, as the Board may find necessary and appropriate. Common Expenses shall be shared by all Unit Owners equally as provided in Article VIII hereof and may include, but are not limited to, the following: (a) costs to maintain the Community entry features, including any expenses for landscaping, electricity and/or irrigation associated therewith; (b) costs to maintain the storm water drainage facilities and storm water detention/retention pond(s) serving the Community; (c) contributions to the reserve fund; (d) costs to maintain and repair the exterior surfaces of the residential dwelling located on Units; (e) property taxes for the Common Area; (f) insurance premiums; (g) landscape maintenance, including landscaping to Units as provided herein; (h) legal fees and property management fees; (i) costs to operate, maintain, repair and insure the Gate System; (j) costs to maintain the private Community streets; and (k) expenses and liabilities incurred as provided herein, the Articles of Incorporation and the By-Laws for the indemnification of officers and directors in connection with the enforcement rights and duties of the Association against Owners and others.

1.9. "Community": The real property described on Exhibit "A," together with such additional property as may be subjected to this Declaration by Supplemental Declaration in accordance with Article VII.

1.10. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community as initially established by Declarant or as may be set forth in the Design Guidelines established pursuant to Article IX hereof. Upon the termination of the right of Declarant to act as the Reviewer as provided in Section 9.2 hereof, such standard may be more specifically determined by the Architectural Review Committee, but shall be consistent with the Community-Wide Standard initially established by the Declarant.

1.11. "Declarant": **Forestar (USA) Real Estate Group, Inc.**, a Delaware corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" or Exhibit "B" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

1.12. "Gate System": means the mechanical gate systems located at the entrance to the Community which limits and/or restricts pedestrian and vehicular

access, ingress and egress to the Community from Hampton Street (R/W varies), as more particularly set forth in Section 5.9 hereof.

1.13. “General Assessment”: Assessments levied on all Units subject to assessment under Article VIII to fund the Common Expenses for the general benefit of all Units in the Community.

1.14. “Governing Documents”: A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines as provided for herein, and the Use Restrictions and Rules, each as they may be amended, revised or modified as provided herein.

1.15. “Member”: A Person subject to membership in the Association pursuant to Section 3.2 hereof.

1.16. “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.17. “Mortgagee”: A beneficiary or holder of a Mortgage.

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

1.19. “Person”: A natural person, corporation, limited liability company, joint venture, partnership, trustee, or any other entity recognized as a separate legal entity under Georgia law.

1.20. “Plat”: The Recorded final subdivision plat applicable to the Community or phase of the Community.

1.21. “Record”, “Recorded”, or “Recording”: The appropriate recordation or filing of any document in the Office of the Clerk of Henry County Georgia, or such other place which is designated as the official location for recording deeds and similar documents affecting title to real estate.

1.22. “Special Assessment”: Assessments levied in accordance with Section 8.5 hereof.

1.23. “Specific Assessment”: Assessments levied in accordance with Section 8.6 hereof.

1.24. "Supplemental Declaration": An instrument Recorded pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.25. "Unit": A portion of the Community, whether improved or unimproved, which is intended for development, use, and occupancy as a residence for a single family. The residential dwelling located on each Unit shall be attached by one or more party wall(s) to one or more residential dwellings located on adjacent Units so that the boundary between such Units and the residential dwellings located thereon is a line running along the center of the party wall separating said residential dwellings.

The ownership of each Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Unit (including, but not limited to, compressors, conduits, wires and pipes) and any driveway, walkway, porch, deck, balcony, courtyard, patio, steps, wall, roof, foundation or similar appurtenance attached to the Unit when such Unit is initially constructed. The ownership of each Unit shall also include, and there shall automatically pass with the title to each Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in and to the Common Area, as herein provided.

In the case of a portion of the Community intended and suitable for subdivision into single-family townhomes but as to which no Plat has been Recorded, such property shall be deemed to contain the greater of the maximum number of Units permitted under the city or county zoning ordinance applicable to the property or the number of Units shown on Declarant's site plan or concept plan until such time as a subdivision Plat is Recorded with respect to all or a portion of the property. Thereafter, the portion encompassed by such Plat shall contain the number of Units depicted on the Plat and any portion not Platted shall continue to be treated as set forth in this paragraph.

1.26. "Use Restrictions and Rules": Those use restrictions and rules affecting the Community, which may be adopted, modified, and repealed as set forth in Article X. The initial Use Restrictions and Rules are set forth on Exhibit "C" attached hereto and by this reference incorporated herein.

**Article II**  
**PROPERTY RIGHTS**

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Unit, subject to:

(a) This Declaration, a Supplemental Declaration and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying title to the Common Area to the Association;

(c) The right of the Board and the membership to adopt rules regulating the use and enjoyment of the Common Area;

(d) The right of the Association to suspend the right of an Owner to use and enjoy the Common Area and deactivate any gate code, remote, access code or other equipment used in connection with the operation of the Gate System for any period during which any past due assessment against any Unit of the Owner remains unpaid, and for a reasonable period of time for an infraction of the Declaration, By-Laws, Use Restrictions and Rules, Design Guidelines and any rules and regulations promulgated by the Board of Directors;

(e) the right of the Association to limit the number of Persons who may use the Common Area and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(f) The right of the Association, acting through the Board, to dedicate or transfer title to all or any part of the Common Area upon the affirmative vote of Owners of at least two-thirds (2/3) of the Units (other than Units owned by the Declarant) and the consent of Declarant;

(g) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred upon the affirmative vote of Owners of at least two-thirds (2/3) of the Units (other than Units owned by the Declarant) and the consent of Declarant; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or the holder of any Mortgage encumbering any Unit or other property in the Community;

(h) Declarant's and Approved Builder's right to use the Common Area without payment or charge for such purposes as Declarant or Approved Builder, in their sole discretion, deem necessary and proper for the development, sale, construction, marketing and build out of the Community;

(i) the right of the Association, acting through the Board, and without a vote of the membership, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Area;

(j) all encumbrances, zoning conditions, and other matters of Record affecting title to the Common Area including, without limitation, any deed or other document granting the Declarant mineral rights as more particularly set forth in such deed or document; or

(k) The right of the Association, acting through the Board, to dedicate portions of the Common Area to any local, state or federal governmental or quasi-governmental entity without the consent of the Members.

Any Owner may extend or delegate his or her right of use and enjoyment to the Common Area to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition of the Common Area unless the portion of such Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property, which may or may not be subject to this Declaration.

2.3. Condemnation. If any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine in its sole discretion.

### Article III MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for the management, maintenance, operation, and control of the Area of Common Responsibility and enforcement of the Governing Documents and shall

perform its functions in accordance with the Governing Documents and the laws of the State of Georgia, including, without limitation, the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-101, *et seq.*

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 hereof and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners as set forth herein, in the By-Laws and any rules and regulations adopted by the Board. The membership rights of an Owner, which is not a natural person, may be exercised by any officer, director, partner, manager, member or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary. Membership shall be appurtenant to and shall not be separated from ownership of a Unit.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any and shall include any Approved Builder. Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership as provided in Section 3.2 above. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Association's Secretary prior to any meeting. The vote attributable to a Unit shall be suspended in the event that more than one Person seeks to exercise it. The Board shall have the right to suspend the voting rights of an Owner for any period during which any past due assessment against any Unit remains unpaid and for a reasonable amount of time for an infraction of the Governing Documents.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member are set forth in relevant provisions of the Declaration and By-Laws. The rights of Declarant, as the Class "B" member, shall be of no further force and effect: (i) on the date that the Declarant no longer owns any property primarily for development or sale in the Community and no longer has the right to unilaterally annex additional property to the provisions of this Declaration as provided in Section 7.1 hereof; or (ii) upon Recording a written document, executed by Declarant and consented to by Approved Builder, which consent shall not be unreasonably withheld, conditioned or delayed, terminating the rights of the Declarant and the Class "B" Member hereunder.

Notwithstanding anything to the contrary herein and regardless of whether the Class "B" membership remains in effect, the Declarant shall be entitled to cast one (1) vote for each Unit owned.

**Article IV**  
**RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage, operate and maintain the Common Area and all improvements located and constructed thereon, including, without limitation, the Community entry features, Gate System and any storm water detention/retention ponds and storm water drainage facilities serving the Community, in a manner consistent with the Community-Wide Standard, as more particularly set forth in Section 5.1(a) hereof and subject to any restrictions set forth in the deed or other instrument conveying property to the Association, if any. The Board is specifically authorized, but not obligated, to retain or employ a professional management agent to assist in carrying out the Association's responsibilities under the Governing Documents, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use.

(a) Conveyance of Common Area. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Approved Builder, Declarant or their designees or successors-in-title may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. All such property shall be accepted by the Association "AS IS" without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements located or constructed thereon, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials which have been or will be used in such property or repairs.

(b) Reconveyance of Common Area. Upon the written request of Approved Builder or Declarant, the Association shall reconvey to Declarant or Approved Builder, as the case may be, without a vote of the Members, all or any portion of any portion of the Common Area originally conveyed by Declarant or Approved Builder to the Association for no consideration, to the extent conveyed by Declarant or Approved Builder in error or needed by Declarant or Approved Builder to adjust property lines or accommodate changes in the development plan.

The Association hereby appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association, to reconvey such property on behalf of the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any such conveyance to or reconveyance from the Association. Neither the Recordation of any Plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by a Recorded instrument.

#### 4.3. Enforcement.

(a) General. The Declarant or the Association, as the case may be, may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the By-Laws, including, without limitation: (i) the imposition of reasonable monetary fines; (ii) the suspension of the right to vote; (iii) the suspension of an Owner to use and enjoy the Common Area; (iv) a suspension of the right to receive any services or benefits which are provided by the Association, if any; and (iv) the deactivation of any gate code, remote, access card or other equipment used by an Owner in connection with the operation of the Gate System. Any suspension shall not effect an Owner's obligation to pay assessments coming due during the period of suspension.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and local governments may enforce their ordinances within the Community.

(b) Self Help. In addition to any other remedies provided for herein, the Association, acting through the Board, the Declarant or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Community to abate or remove any structure, thing, improvement or condition which violates the Governing Documents. Unless an emergency situation exists, the violating Owner shall be given ten (10) days written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorneys' fees actually incurred, shall be assessed against the Unit of the violating Owner as a Specific Assessment. The Declarant, the Association, the Architectural Review Committee and their respective, officers, directors, members, representatives and duly authorized agents shall not be liable for damages to Person or property from exercising the rights set forth in this Section 4.3, including, without limitation, claims for damages resulting from the removal of a nonconforming structure, improvement, thing or condition.

(c) Litigation and Attorneys' Fees. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of the Governing Documents or Association rules and regulations, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, actually incurred in such action.

(d) Enforcement Rights of Declarant. So long as the Declarant owns any property described on Exhibit "A" or Exhibit "B" or has the right to unilaterally annex additional property to the provisions of the Declaration, the Declarant may, but shall not be obligated to, take any enforcement action, or exercise any right on behalf of or independent from the Association; which action, shall include, but not be limited to the imposition of monetary fines; provided, however, in the event that monetary fines are imposed, only one fine may be imposed for a single violation such that an Owner or occupant may not be fined by the Declarant and the Association for the same violation. In the event fines or other sanctions are imposed by the Declarant hereunder, the Declarant shall have any and all rights to collect such fines or sanctions (which fines shall be payable to the Association) and any related charges, including, without limitation, reasonable attorneys' fees actually incurred and costs of collection in the same manner as provided herein for the collection of assessments.

(e) No Obligation of Association to take Enforcement Action. The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, inconsistent with the overall scheme of development for the Community or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking such enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision in the future or under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. For so long as Declarant owns any property described on Exhibit "A" or Exhibit "B," Declarant may designate sites within the Community for fire, police, and utility facilities; public schools and parks; and other public or quasi-public facilities. The sites may include Common Area, in which case the

Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant.

4.6. Indemnification.

(a) The Association shall indemnify every officer, director, and committee member, including members of the Architectural Review Committee established under Article IX hereof, 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 approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Georgia law.

(b) The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available, as more particularly provided in Article VI hereof.

(c) Decisions on whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as outlined in Section 3.23 of the By-Laws.

4.7. 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 within the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Notwithstanding the foregoing, the Association, Approved Builder, Declarant and their respective officers, directors, employees, representatives and agents shall not in any way be considered insurers or guarantors of safety or

security within the Community, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. The obligation to provide security lies with each Unit Owner individually.

No representation or warranty is made that any security system or measures 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 of Directors and committees, Declarant, Approved Builder and their respective officers, directors, employees, representatives and agents are not insurers or guarantors of safety or security and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from the acts of third parties.

## **Article V** **MAINTENANCE**

### 5.1. Association's Responsibility.

(a) General. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) the Common Area, including, without limitation, any open space, landscaping, signage, lighting, irrigation systems and equipment, fences, walls, retaining walls, and other structures and improvements situated upon the Common Area;

(ii) any perimeter fencing, retaining walls or perimeter walls in the Community, regardless of whether they are located on a Unit or Common Area;

(iii) landscaping, signage, sidewalks, street medians and street islands located adjacent to public rights-of-way adjacent to the Community, except to the extent that such responsibility is assumed by a governmental or quasi-governmental body, public utility or third party;

(iv) all drainage ponds, storm water retention/detention ponds, or detention and/or drainage systems serving the Community and any gate, fence or other enclosure surrounding said storm water retention or detention ponds, in accordance with any Recorded or to be Recorded maintenance and/or indemnification agreements regarding the same and regardless of whether such storm water detention/retention ponds are located on a Unit or Common Area, if and to the extent maintenance is required in the Board's opinion and such area is not otherwise maintained on an

ongoing basis by a governmental entity or third party; provided, however, the Association shall not be responsible for any maintenance and/or repair to any storm water drainage facilities which exclusively serve a Unit;

(v) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for the maintenance thereof entered into by the Association (including any agreement with any governmental or quasi-governmental entity);

(vi) any Community entry features, regardless of whether the same are located on a Unit or Common Area, including, without limitation, monument signage, landscaping, fencing, lighting systems and irrigation systems related thereto or used in connection therewith;

(vii) until the rights of Declarant and Approved Builder terminate as provided in Article XIII hereof, any property and facilities owned by Declarant or Approved Builder and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant or Approved Builder, as the case may be, to the Association and to remain a part of the Area of Common Responsibility and to be maintained by the Association unless and until such time as Declarant or Approved Builder revokes such privilege of use and enjoyment by written notice to the Association;

(viii) the centralized mailbox area and the mailboxes located thereon;

(ix) limited maintenance to the exterior of a residential dwelling located on a Unit as provided in Section 5.2 hereof;

(x) exterior lighting serving the Community, including, without limitation, street lights, if and to the extent the same are not maintained on an ongoing basis by a governmental entity or third party; provided, however, the Association shall not be responsible for the maintenance, repair and replacement of any exterior lighting attached to, exclusively serving or located on the residential dwelling on a Unit;

(xi) the Gate System; and

(xii) all private Community streets, sidewalks and street signs.

The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform any maintenance under this Declaration on behalf of the Association.

(b) Assumption of Additional Maintenance. The Association may maintain property which it does not own, regardless of whether such property is located within or outside of the Community, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard or otherwise benefits Owners.

(c) Easement and Covenant to Share Cost Agreements. The Board of Directors, without a vote of the Members, but with the consent of the Declarant, shall have the right to enter into easement and/or covenant to share cost agreements where the Board has determined that such action would benefit the Owners.

(d) Continuous Maintenance of Area of Common Responsibility. The Association shall maintain the facilities and improvements located within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing seventy-five percent (75%) of the total eligible votes in the Association and the Declarant and Approved Builder, until their rights terminate as provided in Article XIII hereof, agree in writing to discontinue such maintenance.

Except as provided above, the Area of Common Responsibility and the Association's maintenance responsibility with respect thereto shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant and Approved Builder until the rights of Declarant and Approved Builder have terminated under this Declaration as provided in Article XIII hereof.

(e) Maintenance Expenses. Except as otherwise provided herein, all costs associated with the Association's maintenance responsibilities for the Area of Common Responsibility shall be a Common Expense to be allocated among all Units subject to assessment as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for or entitled to use, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. Notwithstanding the foregoing, in the event the Association determines that the need for maintenance, repair or replacement, which is the Association's responsibility as set forth herein, is caused through the willful or negligent act of an Owner or the occupants, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair and replacement and all costs associated therewith not paid for by insurance shall be assessed against the Unit as a Specific Assessment.

5.2. Exterior Unit Maintenance.

(a) Maintenance by the Association. As provided in Section 5.1 above, the Association shall maintain and keep in good repair the exterior portions of residential dwellings located on Units in the Community on a schedule determined by the Board of Directors in its sole discretion. Exterior maintenance performed to a residential dwelling located on a Unit by the Association shall be limited to the following:

(i) cleaning, repairing, and repainting and/or pressure washing the exterior surface material of the residential dwelling located on each Unit, including stucco, wood, and trim, as applicable;

(ii) Except for windows and doors which are the responsibility of an Owner pursuant to subsection (b) hereof, the Association shall maintain all exterior building surfaces, exterior roofing surfaces, including without limitation, downspouts, gutters, shingles, decking, and other surface roofing materials, and sheathing within the Community, provided, all other portions of the roof systems, joists, support structures and any vents, fans, plumbing stacks, or other items attached to the roof and serving a single Unit shall remain a part of the Unit and be the maintenance responsibility of the Owner;

(iii) landings, stoops, and overhangs to the Units; and

(iv) all pipes, utility lines, wires, plumbing, conduits and systems that serve more than one (1) Unit or any portion of the Common Area, if and to the extent the same are not maintained on an ongoing basis by a governmental entity or third party.

In the event any personal property of an Owner or occupant, including, but not limited to, any satellite dish, grill or patio furniture, is stored, placed or affixed to a deck, patio, balcony, the exterior of a residential dwelling, or such other area the Association is responsible for maintaining pursuant to this Article V, the Association shall have the right, but not the obligation, in the Board's sole discretion, to remove and reinstall such personal property in order to perform its maintenance responsibilities hereunder, and any and all costs associated with the removal and reinstallation of such property may be assessed against the Unit of such Owner or occupant as a specific assessment. Additionally, in the event the Association incurs additional maintenance costs because an Owner's or occupant's personal property is stored, placed or affixed to any area the Association is obligated to maintain, the Association shall have the right to specifically assess such additional maintenance costs against the Unit of such Owner or occupant. In the event that such personal property is damaged or destroyed during the performance of any maintenance, repair or replacement hereunder, the Association, and

the officers, directors, agents or employees thereof, shall not be liable for such damage or destruction.

(b) Maintenance by the Owner. Except for maintenance performed on or to a Unit by the Association as provided in this Article V, all maintenance of the Unit and all structures and other improvements located thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with the Community-Wide Standard and this Declaration. Maintenance by the Owner shall include, without limitation, the following:

- (i) all doors, including screen and storm doors, garage doors, and door hinges, frames, glass, screens and all exterior hardware;
- (ii) HVAC or similar private utility systems, component or item, located outside of the exterior wall which serves a single Unit;
- (iii) any deck, patio, porch, balcony, or courtyard appurtenant to a Unit, including all structural components of such deck, patio, porch, balcony or courtyard and the painting, staining and/or sealing of the same; and
- (iv) any driveway or walkway exclusively serving a Unit;
- (v) all windows, including, without limitation, window screens, frames, glass and hardware;
- (vi) foundations and footings, including waterproofing, either above or below grade;
- (vii) any pipe(s), wire(s), conduit(s), utility lines, plumbing and sanitary sewer and water lines which serve only the Unit, regardless of whether said pipe(s), wire(s), conduit(s), utility lines, plumbing and sanitary sewer and water lines are located within or outside of a Unit's boundaries; and
- (viii) all structural components of the residential dwelling located on a Unit, including roof joists, trellis and similar support structures.

Notwithstanding the foregoing, each Owner of a Unit shall be obligated to: (i) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other Persons in or on other Units; (ii) promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and (iii) not make any alterations in a Unit which are to be maintained by the Association, if any, remove any portion thereof, make any additions thereto, or do anything with respect to the exterior or interior of such Unit or the structures located thereon which would or

might increase the Association's maintenance costs or jeopardize or impair the safety or soundness of any Unit or any structure or improvement located thereon, without first obtaining the written consent of the Board and all Owners and Mortgagees of the affected Units. Each Owner shall also not impair any easement without first obtaining the written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.

5.3. Landscape Maintenance to Common Area. As provided in Section 5.1 above, the Association shall be responsible for all landscaping to all green space and open space areas in the Community which are located outside of the boundary of a Unit. The Board of Directors in its sole discretion may leave portions of the Common Area as undisturbed natural areas and may change the landscaping to the Common Area at any time and from time to time or may, with the consent of the Declarant, change the level of maintenance performed. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association to the Common Area and the rights of Owners with respect to adding or modifying landscaping improvements to the Common Area, including, for example allowing seasonal flowering plants in certain Common Areas of the Community at the expense of the Owner. Owners shall not add trees, shrubs, bushes, plants or other vegetation to the Common Area without the prior written consent of the Board of Directors. Any landscaping improvements originally installed by an Owner on the Common Area which are not properly maintained or are installed without prior written permission of the Board, including, but not limited to, damaged, diseased or dead plants, shrubs and trees may, at the sole discretion of the Board of Directors, be removed from the Community and all costs associated therewith may be assessed against the Owner and the Unit as a specific assessment.

5.4. Failure of Owner to Maintain. In the event that the Board of Directors 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 under this Declaration, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement to be performed. 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-day period, to commence such work which shall be completed within a reasonable period of time. If an Owner does not comply with the provisions hereof, the Association may provide such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment. This provision shall not apply to any Unit(s) owned by Declarant, unless improved with a dwelling and occupied as a residence.

5.5. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, the responsibility for maintenance shall include the responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and the Governing Documents. 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.

5.6. Party Walls. Each wall that is built as a part of the original construction which serves as the dividing line between two Units and/or the residential dwellings located thereon shall constitute a party wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who use the party wall in equal proportions. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who had used the party wall may restore it. If other Owners use the party wall, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Any repair or rebuilding shall be done within a reasonable period of time, and in such workmanlike manner with materials comparable to those used in the original wall, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall or fence, as applicable.

5.7. Limitation of Liability. Owners, occupants and their guests shall use the Common Area and all portions of the Community not contained within a Unit, including, without limitation, the Gate System, at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and occupants shall have an affirmative duty and responsibility to inspect the Common Area and all portions of the Community not contained within a Unit, including, without limitation, the Gate System, for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof. The Association, Approved Builder, the Declarant and their respective officers, directors, employees, representatives and agents shall not be

held liable for: (a) personal injury to any person occurring on the Common Area; (b) loss or damage to personal belongings used or stored on the Common Area or on any other portion of the Community; or (c) loss or damage, by theft or otherwise, of any property of an Owner or occupant.

In addition to the foregoing, the Association, Approved Builder, the Declarant and their respective officers, directors, employees, representatives and agents shall not be liable for injury or damage to any Person or property: (a) caused by the elements or by an Owner or any other Person; (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Area; or (c) caused by any street, pipe, plumbing, drain, pond, lake, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is that of the Association becoming out of repair.

#### 5.8. Measures Related to Insurance Coverage.

(a) The Board of Directors shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Community that are the maintenance responsibility of the Unit Owner which will, in the Board's sole discretion, decrease the possibility of fire or other damage to any improvements located in the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to requiring Owners to: (i) turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; (ii) insulate pipes sufficiently or take other preventive measures to prevent water pipes from freezing; (iii) install smoke detectors; (iv) make improvements to the Owner's Unit; and (v) take such other measures as the Board may reasonably require, so long as the cost of such measures does not exceed the amount of the General Assessment applicable to the Unit in any twelve (12) month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any reasonable requirement made by the Board pursuant to Section 5.8(a) above, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work and such cost shall be a specific assessment and a lien against the Unit and shall be collected as provided herein for the collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to Section 5.8(a) above, including, but not limited to, a right of entry during

reasonable hours and after reasonable notice to the Owner or occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

5.9. Gate System. It is anticipated that the Declarant will install the Gate System. Each Owner, by accepting a deed to a Unit, shall be deemed to acknowledge and agree to the following:

(a) The Board of Directors, with the consent of the Declarant, which consent shall not be unreasonably withheld, shall determine when the Gate System will be operational following its installation.

(b) Neither Declarant, Approved Builder, the Association nor their respective officers, directors, members, representatives or agents shall be responsible for the security of Owners, occupants or their family members, guests, invitees or property. NEITHER DECLARANT, APPROVED BUILDER, THE ASSOCIATION OR ANY OWNER OR OCCUPANT GUARANTEES OR ASSURES TO ANY OTHER OWNER OR OCCUPANT NOR ANY OTHER PARTY THAT THE GATE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER OR OCCUPANT, THEIR PERSONAL POSSESSIONS OR TO GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF A DEED TO A UNIT, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT OR APPROVED BUILDER OR THE ASSOCIATION, AS APPLICABLE, FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE COMMUNITY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE GATE SYSTEM OR OTHERWISE.

(c) All governmental authorities shall have access to the Community for law enforcement, safety and emergency purposes. Each Owner shall look solely to the applicable governmental authority for the provision of law enforcement and police protection.

(d) The Gate System is not intended to replace or to serve in lieu of individual alarm systems or other measures designed to provide security at a residence or within any Unit. Each Owner is encouraged to install personal security devices upon and within such Owner's Unit to the same extent that would be prudent if the Gate System did not exist.

(e) Any installation of the Gate System will be based upon the representations of vendors regarding the operation and performance capabilities of the components of the Gate System.

(f) APPROVED BUILDER AND DECLARANT DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND MAKE NO

REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE GATE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSES FOR WHICH IT WAS DESIGNED. Declarant and Approved Builder do not guarantee that the Gate System will avert or prevent occurrences or consequences which the Gate System is designed to avert or prevent.

(g) The Gate System, if existing, shall be owned, operated, and maintained by the Association at its sole cost and expense and the costs associated therewith shall be a Common Expense. Neither Declarant nor Approved Builder shall be required to operate or maintain the Gate System.

(h) Each Owner shall use the Gate System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Board of Directors.

(i) Each Owner and occupant acknowledges and understands that nonpayment of assessments or a violation of any provisions of this Declaration, By-Laws, Use Restrictions and Rules, or Design Guidelines shall entitle the Association to deactivate any card access system, gate code or other equipment used in connection with the Gate System as authorized under Section 2.1(f) and Section 8.7 of the Declaration.

## **Article VI** **INSURANCE AND CASUALTY LOSSES**

### 6.1. Association Insurance.

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

(i) Blanket property insurance covering the full replacement cost of all insurable improvements from "risks of direct physical loss" for the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has responsibility for maintenance, repair, and/or replacement in the event of a casualty, regardless of ownership. The insurance obligation set forth herein shall include blanket insurance for all Units; provided, however, such insurance shall not include any personal property of an Owner or occupant or any betterments or improvements made to the Units, as more particularly set forth in Section 6.2 hereof.

(ii) Commercial general liability insurance 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, the commercial general liability coverage (including primary and umbrella coverage) shall have a combined single limit of at least One Million and No/100 Dollars (\$1,000,000.00); provided however, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits; and

(iii) Such other insurance such as workers compensation, directors and officers liability coverage, and fidelity insurance as the Board, in the exercise of its business judgment, determines advisable.

Nothing in this Section 6.1 shall be construed as obligating the Association to obtain casualty insurance or any other insurance for any portion of a Unit or any structure or improvement located thereon or a Unit Owner's or occupant's personal property; the responsibility of the same shall be that of the Unit Owner as provided in Section 6.2 hereof.

(b) Policy Requirements. The Association shall periodically review the sufficiency of insurance coverage. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon written request, to any Member. The Board is authorized to obtain the insurance policies and coverage(s) specified in this Declaration through the Declarant and reimburse the Declarant for the cost thereof. Insurance obtained by or through the Declarant shall satisfy all insurance responsibilities of the Board.

To the extent available at reasonable cost and terms, all Association insurance shall:

(i) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the Owners, who shall be insured under such policy to the extent of the Owners' interest;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

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

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, and the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses.

6.2. Insurance on Units; Damage to Units. By virtue of taking title to a Unit subject to the terms and conditions of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any improvements to the Unit made by Declarant during the initial construction of the Unit as provided below, or made by the Owner thereafter, or to provide any insurance for any personal property of the Owner or occupants, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall be responsible for obtaining and maintaining the following: (a) a liability policy covering damage or injury occurring on a Unit; (b) insurance covering an Owner's or occupant's personal property; (c) insurance covering the Unit to the extent not insured by policies maintained by the Association, including, without limitation, any betterments and improvements made to the residential dwelling located on a Unit which are either installed by the Declarant or Approved Builder during the initial construction process at the request of a purchaser who has entered into a contract with Declarant or Approved Builder to purchase such Unit or made by an Owner at any time thereafter; and (d) insurance covering any

structures, finishes, building systems, betterments and improvements not covered by the Association's policy. If an Owner fails to provide evidence of coverage required by this Section to the Association upon request, the Association may (but shall not be obligated to) obtain such insurance coverage on behalf of the Owner and assess the costs to the Owner as a Specific Assessment. The policies required hereunder shall be in effect at all times.

Within ten (10) days of any written request from the Board of Directors, each Owner shall file with the Association a certificate from the insurer evidencing the insurance coverage required hereunder and, if requested, a copy of the individual policy or policies covering his or her Unit. In the event that an Owner does not provide proof of insurance as required herein, the Association shall have the right to purchase such insurance on behalf of such Owner and the cost thereof shall be a Specific Assessment against the Unit. Such Owner shall promptly notify the Board in writing in the event such policy is canceled.

### 6.3. Damage and Destruction.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any structure or improvement covered by insurance written in the name of the Association, the Board of Directors shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Construction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total eligible Association vote, the Declarant, Approved Builder and the Owners of any damaged Units otherwise agree. If, for any reason, either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information is made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owners of Units who would be

responsible for such loss in the absence of insurance or otherwise against the Owners of all Units. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess funds shall be deposited to the benefit of the Association. In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then, and in that event, the property shall be maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition consistent with the Community-Wide Standard and this Declaration.

6.4. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. The Owner(s) shall be responsible for the full amount of the deductible under the Association's policy to the extent the same is not covered under such Owner's individual insurance policy. If the loss affects more than one Unit or a Unit and the Common Area, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provides that the deductible will apply to each Unit separately. If an Owner fails to pay the deductible when required hereunder, the Association shall pay the deductible and assess the cost to such Owner as a Specific Assessment in accordance with Section 8.6 hereof.

## Article VII

### ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation Without Approval of Membership. Until all of the property described on Exhibit "B" has been subjected to this Declaration or thirty (30) years after the Recording of the Declaration, whichever is earlier, Declarant may, from time to time, unilaterally subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B." Declarant may transfer or assign the right to annex property to another Person, individual or entity, provided that such transfer or assignment is memorialized in a written, Recorded instrument executed by Declarant.

Annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any annexation shall be effective upon the filing for Record of such Supplemental Declaration, unless a later effective date is provided

therein. Notwithstanding the foregoing, nothing in this Declaration shall be construed to require the Declarant to annex or develop any of the property set forth in Exhibit "B".

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration by Recording a Supplemental Declaration with the consent of: (a) the owner of such property; (b) the affirmative vote of Members representing at least two-thirds (2/3) of the total eligible votes in the Association present in person or by proxy at a meeting duly called for such purpose; (c) the Declarant, until its' rights have terminated as provided in Article XIII hereof; and (d) Approved Builder, until its rights have terminated as provided in Article XIII hereof. Such annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by: (x) the President and the Secretary of the Association; (y) by the owner of the property to be annexed; and (z) by Declarant and Approved Builder, if the consent of Declarant and/or Approved Builder is required. Any annexation shall be effective upon the filing of Record of such Supplemental Declaration, unless a later effective date is provided therein.

7.3. Withdrawal of Property. Declarant, with the consent of Approved Builder (which consent shall not be unreasonably withheld, conditioned or delayed) may amend this Declaration to remove any portion of the Community from the coverage of this Declaration and the jurisdiction of the Association, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any such withdrawal shall be accomplished by filing an amendment to the Declaration describing the property to be removed from the provisions of the Declaration and jurisdiction of the Association and such amendment shall be effective upon Recordation, unless a later effective date is provided therein. Such amendment shall be signed by: (a) the Declarant; (b) Approved Builder; and (c) the Owner of the property to be withdrawn, if not Declarant or Approved Builder, and shall not require the consent of any other Unit Owners in the Community.

7.4. Additional Covenants and Easements. Declarant, or Approved Builder with the consent of Declarant, may subject any portion of the Community to additional covenants and easements by Recording a Supplemental Declaration, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements on the property described therein. Any such Supplemental Declaration shall require the written consent of the Declarant and Approved Builder, as the case may be, and the owner(s) of the subject property, if other than Declarant. Any Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

**Article VIII**  
**ASSESSMENTS**

8.1. Creation of Assessments.

(a) Types. There are hereby created, and the Association is authorized to levy, three types of assessments: (a) General Assessments as described in Section 8.3; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of ten percent (10%) per annum), late charges (in an amount equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount of the assessment or installment not paid when due), costs of collection, and reasonable attorneys' fees actually incurred, shall be a charge and continuing lien upon each Unit and also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon the transfer or conveyance of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of the transfer or conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage or any other purchaser of a Unit who obtains title to a Unit pursuant to the foreclosure of the Mortgage shall be liable for unpaid assessments which accrued prior to the date of acquisition of title. The Recording of this Declaration shall constitute Record notice of the existence of a lien and no further Recordation of any lien shall be required.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at the closing of the transfer of title to a Unit. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit payment in two or more installments or change the due date of the General Assessment. If any Owner is delinquent in paying any assessment or installment thereof or any other charge levied on his Unit, the Board may, upon ten (10) days written notice, accelerate the installments and require the General Assessment to be paid in full immediately. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments. As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include costs of collection, which shall include, without limitation, reasonable attorneys' fees actually incurred and the award of attorneys' fees shall not be construed in accordance with O.C.G.A. Section 13-1-11(a)(2).

Except for those Units which are not subject to assessment pursuant to Section 8.8 hereof, no Owner may be exempt from liability for assessments for any reason, including, without limitation: (a) non-use of the Common Area; (b) abandonment of his Unit; or (c) any other means. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes. The obligation to pay assessments is a separate and independent covenant on the part of each Owner.

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

8.2. Declarant's Obligation for Assessments; Budget Deficit During Declarant Control. As provided in Section 8.8 hereof, Declarant shall not be liable for the payment of assessments on its unsold Units. However, Declarant may, but shall not be obligated to, annually elect to contribute to the Association the difference between the amount of assessments levied on all other Units subject to assessment and the amount of the Association's actual expenditures during the fiscal year (a "Subsidy"). Any Subsidy may be treated, in Declarant's discretion, as either: (a) a voluntary contribution; (b) an advance against future assessments (if any); or (c) a loan by Declarant to the Association. A Subsidy may be evidenced by one or more promissory notes from the Association in favor of Declarant or Declarant may cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community; provided, however, no Mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with such loan unless the loan has been approved by Owners of at least two-thirds (2/3) of the Units and the Declarant in accordance with Section 2.1(h) hereof. Any Subsidy shall be disclosed as a line item in the annual budget. The payment of a Subsidy in any year shall under no circumstances obligate Declarant to continue payment of such Subsidy in future years.

8.3. Computation of Budget and General Assessments. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year. General Assessments shall be fixed at a uniform rate for all Units subject to assessment under Section 8.8. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including the surplus from prior years and any assessment income expected to be generated from any additional Units, if any.

The budget and notice of the amount of the General Assessment for the following year shall be available to each Owner at least thirty (30) days prior to the due date of the General Assessment or any installment thereof. The budget and the General Assessment shall become effective unless disapproved at a meeting by at least sixty-seven percent (67%) of the total eligible vote of the Association, and the Declarant and Approved Builder until their rights have terminated pursuant to Article XIII hereof. There shall be no obligation to call such a meeting unless a petition for a special meeting is presented to the Board within ten (10) days of the delivery of the notice of the General Assessment.

If a budget is not adopted for any year or the budget is disapproved by the Association, Declarant and Approved Builder as provided herein, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

#### 8.4. Reserve Budget and Initiation Fee.

(a) Reserve Budget. The Board may prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. If established, the Board shall include as a line item in the annual budget a capital contribution in an amount sufficient to meet the Association's projected needs over the budget period. There shall be no obligation to establish a reserve budget and make such assessments. If reserves are not established or are insufficient for the repair or replacement of any capital asset, Special Assessments may be levied as provided in Section 8.5 hereof.

(b) Initiation Fee. Upon each and every conveyance of title for every Unit in the Community after a certificate of occupancy has been issued for the residential dwelling located thereon, an initiation fee in an amount determined by the Board of Directors in its sole discretion ("Initiation Fee"), shall be made by or on behalf of the new Owner to the Association as set forth below. The Initiation Fee shall be a Specific Assessment against the Unit and shall be in addition to, not in lieu of, any General Assessment or Special Assessment. The Initiation Fee shall be payable at closing, or, if not paid at closing, paid immediately upon demand by the Association, shall not be prorated, and the Association shall have all rights under the Declaration to collect such Specific Assessment if it is not paid. The Initiation Fee may be used by the Association for any purpose which provides a direct benefit to the Community, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. The Initiation Fee shall not apply to the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant

to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the Owner acquiring title to the Unit from the foreclosing Mortgagee.

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments against all Owners in the Community from time to time to cover unbudgeted or unanticipated expenses or expenses in excess of those budgeted. Except for Special Assessments authorized under Section 6.1 hereof, any Special Assessment which would exceed the amount of the General Assessment attributable to a Unit in any fiscal year shall require the affirmative vote or written consent of a majority of the total eligible votes in the Association, and the written consent of Declarant and Approved Builder until their rights have terminated pursuant to Article XIII hereof in order to be effective. 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. Special Assessments shall be levied equally on all Units subject to assessment under Section 8.8.

8.6. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and/or administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants in the Community (which might include, without limitation, landscape maintenance or pest control), which assessments may be levied in advance of the provision of the requested benefit, item, or service or as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws, Design Guidelines, Use Restrictions and Rules; provided, however, prior to the imposition of any monetary fines, the Board shall provide the Unit Owner with prior written notice and an opportunity for a hearing in accordance with Section 3.22 of the By-Laws.

By way of explanation and not limitation, the following shall constitute Specific Assessments: (a) fines; (b) the Initiation Fee; and (c) the cost of maintenance performed by the Association which is the responsibility of a Unit Owner.

In addition to the foregoing, 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 Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received; (b) expenses of the

Association which benefit all Units, but do not provide an equal benefit to all Units, may be specifically assessed equitably among all Units according to the benefit received; and (c) expenses of the Association which are attributable to or incurred by a particular Owner or the occupants, guests, licensees or invitees of such Owner may be specifically assessed against the Unit of such Owner.

8.7. Nonpayment of Assessments; Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges, costs of collection, and reasonable attorneys' fees actually incurred as provided in this Article VIII. Such lien shall be superior to all other liens, except: (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Georgia law.

Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge (in an amount equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount of the assessment or installment not paid when due) and interest (computed from the due date of such assessment at a rate of ten percent (10%) per annum). As provided in O.C.G.A. Section 44-5-60(e), the obligation for the payment of assessments and fees arising hereunder shall include costs of collection, which shall include, without limitation, reasonable attorneys' fees actually incurred and the award of attorneys' fees shall not be construed in accordance with O.C.G.A. Section 13-1-11(a)(2).

The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Henry County, Georgia, but no claim of lien shall be required to establish or perfect the lien for unpaid assessments. The Association may also: (a) suspend the membership rights of an Owner, including the right to vote; (b) suspend the right of a delinquent Owner to use and enjoy the Common Area; (c) suspend the right of an Owner to receive any services or benefits provided to such Unit by the Association, if any; and (d) deactivate any gate code, remote, access card or other equipment used in connection with the operation of the Gate System. Any suspension shall not affect an Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Unit in favor of the Association.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey such Unit. While the Association owns a Unit following

foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the General Assessment that would have been charged to the foreclosed Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments arising prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit arising prior to the date of acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.8.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month after such Unit has been issued a certificate of occupancy for the residential dwelling located thereon by the appropriate governmental agency and conveyed to a Person intending to occupy said Unit for residential use or use such Unit for residential purposes. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Any Unit which has been approved by Declarant or Approved Builder for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant, Approved Builder or any other Person, so long as such Unit is approved for use as a model home and is not occupied for residential purposes.

8.9. Failure to Assess. The failure of the Board to fix assessment amounts or rates or to deliver or mail 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 General Assessments on the same basis as the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.10. Exempt Property. The following property shall be exempt from the payment of assessments:

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

(b) Any property dedicated to and accepted by any governmental authority or public utility;

(c) Any property acquired by the Association at a foreclosure sale as set forth in Section 8.7 hereof; and

(d) Any Unit which is not subject to assessment pursuant to Section 8.8 hereof.

8.11 Estoppel Letter. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association or its managing agent setting forth the amount of assessments past due and unpaid, including any late charges, interest, fines, or other charges levied against that Unit. Such request shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association shall, within five (5) business days after receiving a written request therefor, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. The Association may charge a reasonable fee as may be permitted by law as a prerequisite to the issuance of such statement. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association. It is the intent of this provision to comply with O.C.G.A. Section 44-14-15(c), as amended.

## Article IX ARCHITECTURAL STANDARDS

9.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, other site work, exterior alteration of existing improvements, painting or modifying fences, and planting and/or removing landscaping materials) shall take place on a Unit except in compliance with this Article and upon the approval of the Reviewer as provided in Section 9.2 hereof. Notwithstanding the foregoing, the Board 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. Any Owner may remodel, paint, or redecorate the interior of a structure located on a Unit

without approval. However, modifications and/or additions to the interior of screened porches, decks, patios, balconies and similar portions of a Unit which area visible from outside of a structure located on a Unit shall be subject to approval. Notwithstanding the foregoing, no approval shall be required to repaint the exterior of a structure located on a Unit in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

This Article shall not apply to the activities of Declarant or the Association. An Approved Builder may submit its standard plans for approval hereunder, which approval shall not be unreasonably withheld, and thereafter no further approval shall be required under this Article for such Approved Builder to construct improvements on Units consistent with the approved standard plans.

This Article may not be amended without the written consent of the Declarant or Approved Builder until their rights have terminated as provided in Article XIII hereof.

9.2. Architectural Review. So long as Declarant owns any property described in Exhibit "A" or Exhibit "B" for development and/or sale or has the right to unilaterally annex additional property to the provisions of the Declaration as provided in Section 7.1 hereof, Declarant shall have the exclusive authority to administer and enforce the architectural controls under this Article and to review and act upon all applications for construction and modifications within the Community. There shall be no surrender or assignment, in whole or in part, of the rights of Declarant in this Article IX by implication or otherwise, except in a Recorded instrument executed by Declarant terminating or assigning the rights granted pursuant to this Article IX.

Upon the expiration or surrender of Declarant's authority to administer and enforce architectural controls for all or a portion of the Community, the Board shall create and appoint an Architectural Review Committee ("ARC"), which shall have authority over modifications, additions, or alterations made on or to existing structures or improvements located on Units. The ARC shall consist of either three (3) or five (5) persons, determined in the sole discretion of the Board, who shall be appointed, serve at the discretion of, and removed by the Board in its' sole discretion. Notwithstanding anything to the contrary herein, until Declarant's authority to exercise architectural control in the Community expires as provided herein, the ARC shall have no rights or authority except as Declarant may assign in a written Recorded instrument.

For the purposes of this Article IX, the entity having jurisdiction in a particular case (the Declarant or the ARC, as the case may be) shall be referred to as the "Reviewer." The Reviewer may delegate certain rights and responsibilities to qualified individuals to act on its behalf, and their compensation, if any, shall be established from time to time by Declarant or the Board, as applicable.

9.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant, with the consent of Approved Builder (which consent shall not be unreasonably withheld, conditioned or delayed), may prepare architectural standards or design guidelines ("Design Guidelines") for the Community. The Design Guidelines are not the exclusive basis for decisions but they may provide guidance on specific matters relating to construction activity and modifications to existing structures and improvements located on Units in the Community. Declarant shall have the sole and full authority to adopt or amend the Design Guidelines until such time as its rights terminate as provided in Article XIII hereof or are voluntarily surrendered as provided herein. Thereafter, the ARC, with the consent of the Board, shall have the authority to adopt, amend, repeal or modify the Design Guidelines. Owners shall conduct any construction, alteration or modification in accordance with the Design Guidelines.

All Owners and occupants of Units are given notice that the use of their Units is limited by the Design Guidelines, as they may be expanded, modified or amended hereunder. Each Owner, by acceptance of a deed or entering into and Recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit may be affected by the Design Guidelines and that the Design Guidelines may change from time to time, and that such changes may not be reflected in a Recorded instrument.

(b) Procedures. Prior to commencing any activity subject to review under this Article IX, an Owner shall submit a written application of the proposed work to the Reviewer for approval. Such application shall be in the form required by the Reviewer and shall include plans and specifications showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation system, utility facilities layout, and other features of proposed construction, as applicable and any other information the Reviewer may reasonably require (collectively, the "Plans"). Before an Owner may begin the proposed work, the application and Plans must be approved in writing by the Reviewer in accordance with the procedures described below. In addition to the foregoing, the Reviewer may charge a reasonable review fee, to be paid in full, prior to reviewing the Plans to cover the reasonable costs incurred in having the application and Plans reviewed by architects, engineers or other professionals.

In reviewing each submission, the Reviewer may consider whatever factors it deems relevant, including, but not limited to, harmony of external design with surrounding structures and environment and location in relation to surrounding structures, topography, and finish grade elevation. Decisions of the Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on

aesthetic matters are purely subjective and may vary over time and among different Persons. The Reviewer may require relocation of native plants within the construction site, screening, and landscaping as a condition of approval of any submission.

The Reviewer shall respond in writing to an application within sixty (60) days of receipt thereof at an address specified by the Owner at the time of submission. The response issued by the Reviewer may: (i) approve the application and Plans in their entirety; (ii) approve a portion of, segments or features of the Plans, and disapprove other portions; or (iii) disapprove the application and Plans in their entirety if they are inconsistent or not in conformity with this Declaration and/or the Design Guidelines. The Reviewer may, but shall not be obligated to, set forth the reasons for such finding, and it may make suggestions to cure objections to an application. In the event the Reviewer fails to respond to a submitted application within sixty (60) days, approval shall be deemed to have been given; provided, no construction which is inconsistent with the Governing Documents shall be deemed approved unless a written variance has been issued. Personal delivery of written notice shall be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

If construction does not commence on a project which has been approved within one hundred eighty (180) days of the date of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval. If construction is not completed on a project for which plans have been approved within a period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article and the Owner will need to re-submit the Plans to the Reviewer for reconsideration.

9.4. No Waiver of Future Approvals. Each Owner acknowledges that the Reviewer will change from time to time and that the interpretation, application, and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, Plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5. Variance. The Reviewer may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations; (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship, or aesthetic or environmental considerations; and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration, the development of the Community, and compatible with existing and anticipated uses of adjoining properties. For purposes of this Section, the

inability to obtain governmental approval or the terms of any financing shall not be considered a hardship warranting a variance.

9.6. Limitation of Liability. The requirements and procedures established by this Article are intended to enhance the overall aesthetics of the Community and shall not create any duty to any Person. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, permitting requirements, zoning conditions and other applicable governmental requirements or local ordinances or rules governing construction in the Community, nor for ensuring the appropriateness of soils, drainage, and general site work. Neither Declarant, the Association, Approved Builder, the Board, any committee, nor their respective officers, members, employees, representatives or agents shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit or for any violation of building codes, permitting requirements, zoning conditions or other violations of applicable governmental requirements, laws and ordinances. In all matters, the Association shall defend and indemnify Declarant, Approved Builder, the reviewing body, and their members.

9.7. Enforcement. Any structure, improvement or landscaping improvement placed or made in violation of this Article or the Design Guidelines, including, without limitation, any construction, modification or alteration which does not conform to and/or is inconsistent with approved Plans, shall be deemed to be nonconforming. Upon written request from the Declarant or the ARC, as the case may be, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant or the Board, as applicable, shall have the right to Record a notice of violation and to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, reasonable attorneys' fees actually incurred, may be assessed against the Unit and collected as a Specific Assessment. In addition, the Declarant, the Association, or their duly authorized agents, as the case may be, shall have the right to enter a Unit to determine whether these restrictive covenants are being complied with and such conduct shall not be deemed a trespass; provided, however, nothing herein shall permit the Reviewer, or its duly authorized agents, to enter any residential dwelling located on such Unit without the consent of the Owner. The Declarant, Approved Builder, the Board, the ARC and their respective officers, directors, members, employees, agents or representatives shall not be liable for claims of damage associated with the removal of any nonconforming structure or improvement in accordance with the procedures set forth herein.

Unless otherwise specified in writing by the Reviewer, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment, which costs may include reasonable attorneys' fees actually incurred. The Declarant, Approved Builder, the ARC, the Association and their respective officers, directors, employees, representatives or agents shall not be held liable for any claims resulting from removing or completing the incomplete work as provided herein.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Community, subject to applicable notice and hearing procedures contained in the By-Laws.

In the event of noncompliance with this Article, the Association or Declarant, as applicable, may Record in the appropriate land records a notice of violation hereunder naming the violating Owner. The Association and Declarant shall also have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewer, including, without limitation, the right to levy and collect fines as provided herein, subject to applicable notice provisions.

## Article X USE RESTRICTIONS AND RULES

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Community in order to enhance all Owners' collective interests, subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, and desires within the Community. The initial Use Restrictions and Rules, attached as Exhibit "C" hereto and by this reference incorporated herein, establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests, and invitees of any Unit. Any lease agreement for the lease of a Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents, as provided in Section 10.4(d) hereof.

10.2. Authority to Promulgate Use Restrictions and Rules. The initial Use Restrictions and Rules applicable to the Community may be modified in whole or in part, repealed, or expanded as follows:

(a) By the Board. Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members and subject to the limitation set forth in Section 10.2(e) hereof, the Board may adopt rules which modify, clarify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules by a majority vote of the directors at any Board meeting. The Board shall send notice by mail to all Owners concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at such Board meeting prior to any action being taken.

Such proposed rule or restriction shall become effective unless disapproved at a meeting duly called for such purpose by Members representing at least fifty-one percent (51%) of the total eligible Association vote and by Declarant and Approved Builder, until their rights terminate as provided in Article XIII hereof, subject to the notice provision in subsection (c) hereof. The Board shall have no obligation to call a meeting of the Members to consider disapproval of a proposed revision, modification or expansion of the Initial Use Restrictions and Rules except upon petition of the Members as required for special meetings in the By-Laws.

(b) By the Members. Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, clarify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by: (a) a vote of Members representing at least fifty-one percent (51%) of the total eligible votes in the Association; (b) Declarant, until its rights terminate as provided in Article XIII hereof; and (c) Approved Builder, until its rights terminate as provided in Article XIII hereof.

(c) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section 10.2, the Board shall send a copy of the newly-adopted rule to each Owner. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) The foregoing procedures shall not apply to the enactment and enforcement of administrative rules and regulations governing the use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, rules regarding landscape maintenance to the Common Area. The Board has the right to enact, amend, and enforce such administrative rules and regulations.

(e) Notwithstanding anything to the contrary in this Section 10.2, any proposed new rule, regulation or use restriction or any modification of an existing rule, regulation or use restriction which materially adversely affects the substantive rights of any Owner to use and enjoy his or her Unit or adversely affects title to a Unit shall be adopted in accordance with the amendment procedure set forth in Section 15.2 hereof.

(f) The foregoing procedures shall not restrict or apply to amendments to this Declaration as provided in Section 15.2 or the Design Guidelines enacted under Section 9.3.

10.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that the use of their Unit or Units is limited by the Use Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and Recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by the Use Restrictions and Rules, that the Use Restrictions and Rules may change from time to time, and that any modification, expansion or cancelation may not be reflected in a Recorded instrument.

10.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment), neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Holiday Displays. The Board may adopt reasonable rules and regulations governing, limiting or prohibiting the display of religious and holiday signs, symbols, and decorations which are located outside of a structure located on a Unit, and may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(c) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of a dwelling located on a Unit, except that the Association may, in its sole discretion, prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that: (i) create monetary costs for the Association, including, without limitation, any increase in Association insurance premiums, or other Owners; (ii) create a danger to the health or safety of others; (iii) generate excessive noise or traffic; (iv) create unsightly conditions visible from outside of the dwelling; or (v) create an unreasonable source of annoyance. Nothing herein shall prevent Declarant or Approved Builder from

maintaining model homes, speculative housing, sales trailers or construction trailers located in the Community.

(d) Leasing of Units. No rule shall prohibit the leasing or transfer of any Unit, or require the consent of the Association or Board for the leasing or transfer of any Unit; provided, however, the Board may, by resolution, establish a minimum lease term. All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents; provided, however, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease; and provided, further nothing herein shall prohibit the Declarant or the Association from Recording an amendment to the Declaration prohibiting leasing or limiting the number of Units which may be leased at one time in accordance with the provisions of Section 15.2 hereof.

(i) Notice. Within seven (7) days of entering into a lease agreement for the lease of a Unit, the Owner shall provide the Board with the following information: (A) a copy of the fully executed lease agreement; (B) the telephone number of the lessee; (C) the names and addresses of all occupants of the Unit; (D) the email address, telephone number and mailing address of the Owner other than at the Unit; and (E) such other information as the Board may reasonably require.

(ii) Compliance with Governing Documents. Every Owner agrees to cause all occupants of his or her Unit to comply with the Declaration, By-Laws, Design Guidelines and the rules and regulations adopted pursuant thereto and is responsible for all violations caused by such occupants, notwithstanding the fact that such occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, Design Guidelines and rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, By-Laws, or a rule or regulation or Design Guideline for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Declaration and By-Laws. If the fine is not paid by the lessee within the time period established by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay such fine. Unpaid fines shall constitute a lien against the Unit.

(e) Reasonable Rights to Develop. No rule or action adopted by the Association or Board shall unreasonably impede Declarant's or Approved Builder's right to develop, construct, market or sell residential dwellings located on Units in the Community.

(f) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in

or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

(g) Activities Incidental to Construction. No rule imposed or action taken by the Association shall impede Declarant, Approved Builders, or other Owners with the consent of the Declarant from maintaining upon the Common Area and Units which they own any facilities necessary or incidental to the construction or sale of Units. By way of example and not limitation, no rule shall prohibit Declarant or Approved Builders from: (i) installing signs and maintaining temporary structures for use during construction of a Unit, including, without limitation, construction trailers and sales trailers; (ii) using any dwelling on a Unit as a sales office; or (iii) maintaining model homes or speculative housing on Units within the Community.

The limitations in this Section 10.4 shall apply only to Use Restrictions and Rules adopted or amended in accordance with Section 10.2. Any changes to the leasing restriction set forth in this Article XVI shall be adopted in accordance with the amendment provisions set forth in Section 15.2 of this Declaration.

## **Article XI** **EASEMENTS**

11.1. Easements of Encroachment and Overhang. There shall be reciprocal appurtenant easements of encroachment and overhang, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than 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 the willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities – Association, Declarant and Approved Builder.

(a) There are hereby reserved to Declarant, Approved Builder, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Community (but not

through any structure, including, without limitation, any residential dwelling, located on a Unit) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining, and operating cable television systems, master television antenna systems, and other devices for sending and/or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways, and trails; drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which Declarant, Approved Builder or the Association owns or within easements designated for such purposes on Recorded Plats.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Community for ingress, egress, installing, reading, replacing, repairing, and maintaining utility lines, meters, and boxes, as applicable. The Board of Directors, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements and other easements under, through, or over the Units and/or the Common Area as may be reasonably necessary to or desirable for the proper maintenance and ongoing operation of the Community.

(b) There is hereby reserved to Declarant, so long as Declarant owns any property described on Exhibit "A" or Exhibit "B" or has the right to unilaterally annex additional property to this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A" or Exhibit "B." To the extent reasonably possible, such easements over Units shall be limited to setback areas adjacent to the perimeter boundary of each Unit.

(c) Any damage to a Unit resulting from the exercise of the easements described in this Section 11.2 hereof shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not permit entry into any structure located on a Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.3. Easement for Utilities - Unit Owner. 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 such Unit and situated in, on or under any other Unit or the Common Area. Certain utility meters and facilities may be installed on the end of a building containing multiple Units and utility lines serving other Units may run across, over, under or through neighboring Units. Easements for all such utility lines are established by this Section 11.3 and Section 11.2 above. 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 other 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 Units and the property of the Owners and occupants thereof, and damage shall be repaired by the Person causing the damage at its sole cost and expense.

11.4. Easements for Drainage. There is hereby reserved to the Declarant and granted to the Association and Approved Builder a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installing, altering, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant, Approved Builder, with the consent of Declarant, or the Association might decide to have installed to serve the Community. Declarant, Approved Builder, with the consent of Declarant, the Association or their respective designees, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any utility or service request a specific license or easement by separate recordable document, Declarant or the Board shall have the right to grant such easement. The Board of Directors, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses and utility easements under, through, or over the Units and/or the Common Area as may be reasonably necessary to or desirable for the ongoing operation and maintenance of the Community.

11.5. Easement for Maintenance - Association. Declarant hereby grants to the Association a perpetual easement across all Units and all other portions of the Community as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole cost and expense. Except in an emergency situation, entry to a residential dwelling located on a Unit shall only be during reasonable hours and after notice to the Owner.

11.6. Easement for Maintenance - Unit Owner. Declarant hereby reserves for the benefit of each Unit reciprocal appurtenant easements between adjacent Units and an easement over adjacent Common Area for the purpose of maintaining or repairing

the improvements located on each Unit which easement shall extend to a distance of five (5) feet as measured from any point on the common boundary between the Units. The easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Unit or Common Area over which this easement is exercised which arises out of such maintenance or repair work.

11.7. Easements to Serve Additional Property. Declarant, Approved Builder and their duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees hereby reserve an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on or through such property. Declarant and Approved Builder agree that it and its successors or assigns shall not be responsible for any damage caused to the Common Area as a result of the exercise of this easement and such damage shall be repaired by the Person causing such damage at its sole cost and expense.

11.8. Easement for Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner; provided, however, the easement granted herein shall not authorize entry onto any single family dwelling located on a Unit without the consent of the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable period of time after requested by the Board.

11.9. Landscaping and Signage Easements. Declarant hereby reserves for itself, Approved Builder and the Association perpetual, non-exclusive easements exercisable by their respective employees, agents, and contractors over those portions of the Community designated as "Landscaping and Signage Easements" (or similar label), if any, on the Recorded subdivision Plats relating to the Community for the purpose of installing, maintaining, repairing, and replacing lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, and landscaping within such easement areas regardless of whether the same are located on Units, Common Area or within a public right-of-way. Nothing herein shall obligate Declarant, Approved

Builder or the Association to exercise such easements or to construct or install any of the foregoing within any Landscaping and Signage Easement or such similar area identified on the Plat.

11.10. Easement to Inspect and Right to Correct. Declarant reserves for itself, Approved Builder and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, thing, or condition which may exist on any portion of the property within the Community, including Units, and a perpetual, nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling located on a Unit shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own cost and expense, any damage resulting from such exercise.

11.11. Construction and Sale Easement. Notwithstanding any provisions contained in the Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, Design Guidelines, and any amendments thereto, Declarant reserves for itself and Approved Builder until their rights terminate as provided in Article XIII hereof, an easement over and across the Community to maintain and carry on development activities as Declarant and Approved Builder may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant or Approved Builder, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

(a) The right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community, including, without limitation, any Unit;

(b) The right to tie into any portion of the Community with driveways, parking areas and walkways;

(c) The right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services;

(d) The right (but not the obligation) to construct recreational facilities on Common Area;

(e) The right to carry on sales and promotional activities in the Community;

(f) The right to place directional and marketing signs on any portion of the Community, including any Unit or Common Area;

(g) The right to construct and operate business offices, signs, construction trailers, model residences, and sales offices and other activities incidental to the construction, development and sales of Units in the Community; and

(h) The right of Declarant and Approved Builder to use residences, offices, or other buildings they own or lease as model residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole cost and expense.

11.12. Easement for Private Streets, Sidewalks and Signs. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement to the Association and the Owner for vehicular and pedestrian access, ingress and egress over and across the private Community streets and sidewalks within the Community. At such time as one or more Plats are Recorded, any reference to private streets and sidewalks shall then and thereafter mean a reference to the private streets and alleys as actually constructed and depicted on the Recorded Plat. The right-of-way easement herein granted shall permit joint usage of such easement by: (i) the Owners and occupants; (ii) the legal representatives, successors and assigns of the Owners; and (iii) invitees and licensees of the Owners and occupants. Declarant hereby expressly reserves for itself, Approved Builder, their successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for itself and Approved Builder, as the case may be, and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private Community streets for the installation, maintenance, and use of such streets and roads, sidewalks, traffic directional signs, grading for proper drainage of said streets and roads, and related activities and improvements.

## Article XII MORTGAGEE PROVISIONS

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

12.1 Audit. Upon the written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such Mortgagee holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

12.2 No Priority. No provision of this Declaration or the By-Laws gives any Owner or other party priority over any rights of a 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.

### **Article XIII**

#### **DECLARANT AND APPROVED BUILDER RIGHTS**

(a) Assignment or Transfer of Declarant Rights. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer or assignment shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No transfer or assignment of the rights of Declarant provided for herein shall be effective unless it is in a written instrument signed by Declarant and Approved Builder (which consent shall not be unreasonably withheld, conditioned or delayed) and duly Recorded.

(b) Marketing and Sales Rights of Declarant and Approved Builder. Declarant and Approved Builder may maintain and carry on without fee or charge upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant or Approved Builder, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, construction trailers and sales offices. Declarant and Approved Builder shall have easements for access to and use of such facilities. Declarant and Approved Builder shall have the right and an easement to maintain signs in the Area of Common Responsibility until its rights terminate as provided herein.

(c) Use of Experts. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant, Approved Builder and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

(d) Amendment to Declaration. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules,

architectural standard, or Design Guideline shall be effective without prior written notice to and the written approval of Declarant and Approved Builder until their rights terminate as provided below.

(e) Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the By-Laws shall cease and be of no further force and effect upon the earlier of: (i) the date that the Declarant no longer owns any property described on Exhibit "A" or Exhibit "B" and no longer has the right to unilaterally annex additional property to the Community and each Unit has been improved with a dwelling for which a certificate of occupancy has been issued and conveyed to an Owner intending to use the Unit for residential use or purposes; or (ii) the Recording by Declarant of a written instrument terminating all of Declarant's rights; provided, however, any termination of the rights of Declarant pursuant to this subsection (ii) shall also require the prior written approval of Approved Builder to be effective, which consent shall not be unreasonably withheld, conditioned or delayed.

Notwithstanding the foregoing, Declarant may in its sole discretion, relinquish certain authority granted to it under the Governing Documents while retaining authority over others. For example and without limitation, the Declarant may terminate its right to appoint and remove the officers and directors of the Association, but reserve all other rights under the Declaration and By-Laws. Any right, power or authority of the Declarant which may be terminated or relinquished prior to the termination of the rights of Declarant hereunder shall be by a written Recorded instrument only, consented to by Approved Builder, and no such right, power or authority shall be relinquished or terminated by implication or otherwise.

(f) Termination of Rights of Approved Builder. The rights of Approved Builder to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the By-Laws shall cease and be of no further force and effect upon the earlier of: (i) the date that Approved Builder no longer owns any property in the Community and no longer has the option pursuant to a contract to acquire additional property within the Community; or (ii) the Recording by Approved Builder of a written instrument terminating all of Approved Builder's rights hereunder.

#### **Article XIV**

#### **DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

14.1. Agreement to Avoid Litigation. Declarant, Approved Builder, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (individually, "Bound Party" and collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the

Community without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 14.2 ("Claims") shall be resolved using the procedures set forth in Section 14.3.

14.2. Claims. All claims, grievances, or disputes arising out of or relating to the design, construction, or repair of improvements on the Community shall be subject to the provisions of Section 14.3; provided, however, any action by the Association against an Owner to enforce the provisions of this Declaration, which shall include, but not be limited to, any suit by the Association to obtain a temporary restraining order, injunctive relief or any suit or other action to collect past due assessments, shall not be subject to the provisions of Section 14.3.

In addition to the foregoing, any suit between Owners, which does not include Declarant, Approved Builder, or the Association as a party, and any suit in which any indispensable party is not a Bound Party shall also be exempt from the provisions of Section 14.3.

14.3. Mandatory Dispute Resolution Procedures for Claims. GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS AN OWNER MUST FOLLOW BEFORE SUCH OWNER MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED THE HOME LOCATED ON A UNIT. NINETY DAYS BEFORE AN OWNER FILES A LAWSUIT OR OTHER ACTION, SUCH OWNER MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS ALLEGED TO BE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. AN OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND THE FAILURE TO FOLLOW THEM MAY AFFECT THE ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

FOR PURPOSES OF O.C.G.A. § 8-2-35, et seq., as amended. THE DEFINITION OF CONSTRUCTION DEFECT AS SET FORTH IN O.C.G.A. § 8-2-35 et seq., as amended, SHALL APPLY.

(a) Notice. The Association shall, no later than ninety (90) days before initiating an action against Declarant, Approved Builder, or any other contractor, provide service of written notice of the claim on the respondent by certified mail or overnight delivery with return receipt. The notice of claim shall state that the Association asserts a construction defect claim or claims in the Area of Common Responsibility and is providing notice of the claim or claims. The notice of claim shall

also describe the claim or claims in sufficient detail to explain the nature of the alleged construction defects and the results of the defects. In addition, the Association shall provide to the Declarant, Approved Builder or contractor any evidence that depicts the nature and cause of the construction defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under evidentiary rules.

(b) Authority to File Suit. An action by the Association against the Declarant, Approved Builder or a contractor to recover damages resulting from construction defects in the Area of Common Responsibility may be maintained only after the Association complies with the following:

(i) The Members of the Association have voted to approve commencement of an action by two-thirds (2/3) of the votes cast, by statutory written ballot as provided in O.C.G.A. 14-3-708 or have approved commencement of an action by the affirmative vote of at least two-thirds of the total membership at a meeting of the Members at which a quorum is present;

(ii) The full Board of Directors of the Association and the claimant have met in person and conferred in a good faith attempt to resolve the Association's claim or the claimant has definitively declined or ignored the requests to meet with the Board of Directors of the Association; and,

(iii) If O.C.G.A. § 8-2-35 *et seq.* is in effect, the Association has otherwise satisfied all of the preaction requirements for a claimant to commence an action pursuant to O.C.G.A. § 8-2-35 *et seq.*, as amended.

(c) Additional Pre-Suit Requirements. In the event the Association duly calls and notices a meeting for the purpose of obtaining the approval of the Members as provided in Section 14.3(b)(i) above, a copy of the notice shall also be provided to the Declarant and Approved Builder at least twenty-one (21) calendar days before the meeting until the rights of Declarant and Approved Builder terminate as provided in Article XIII hereof.

In addition, at least three (3) business days in advance of the meeting at which the Members vote or at the time a statutory written ballot is circulated to the Members to obtain approval of an action to recover damages resulting from construction defects in the Area of Common Responsibility, the Association shall provide each Owner with a copy of the notice of claim provided to the contractor and an additional written description of claims and the reasons the Board is recommending consideration of the litigation.

(d) Destructive Testing. The Association or an attorney for the Association shall not employ a person to perform destructive tests to determine any

damage or injury to a Unit or the Area of Common Responsibility caused by a construction defect unless:

- (i) The person is licensed as a contractor pursuant to law;
- (ii) The Association has obtained the prior written approval of each Unit Owner whose Unit will be directly affected by such testing;
- (iii) The Association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests;
- (iv) Reasonable prior notice and an opportunity to observe the tests is given to the Declarant or contractor against whom an action may be brought as a result of the tests; and,
- (v) If O.C.G.A. § 8-2-35 *et seq.* is in effect, any additional requirements set forth in O.C.G.A. § 8-2-35 *et seq.*, as amended, have been satisfied.

Notwithstanding the foregoing, the Board of Directors of the Association may, without giving notice to the Unit Owners, employ a contractor and such other persons as are necessary to make such immediate repairs to the Unit or Area of Common Responsibility as are required to protect the health, safety, and welfare of the Unit Owners.

14.4 Allocation of Costs of Resolving Claims. All costs, including any attorneys' fees, incurred in complying with this Section shall be borne by the party incurring same. Any and all subsequent costs, including any attorneys' fees, shall be made in accordance with the Right to Repair Act as set forth in O.C.G.A. § 8-2-35 *et seq.*, as amended, if the Right to Repair Act is in effect.

14.5 Enforcement of Resolution. After resolution of any claim, if any party fails to abide by the terms of any agreement, then any other 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 Article XIV. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, reasonable attorneys' fees actually incurred and court costs.

**Article XV**  
**GENERAL PROVISIONS**

15.1. Duration. Subject to the limitations of Georgia law, this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall remain in effect for the maximum period permitted and shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. In the event a written instrument signed by the then Owners of at least two-thirds (2/3) of the Units has been Recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to terminate the same, the Declaration shall be terminated as specified therein.

15.2. Amendment. This Declaration may be amended as provided in this Section. Amendments to this Declaration 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 this Declaration. The amendments authorized by this Section may be of uniform or non-uniform application and Owners shall be deemed to have agreed that the Declaration may be amended as provided herein and that any rule of law requiring unanimous approval of amendments having a non-uniform application shall not apply.

(a) By Declarant. So long as Declarant owns any property subject to, or which may be subjected to, this Declaration, it may unilaterally amend this Declaration if such amendment is: (i) required to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) required to enable any title insurance company to issue title insurance coverage; (iii) required by an institutional or governmental lender or purchaser of mortgage loans; or (iv) necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans; provided, such amendment shall not adversely affect the title to any Owner's Unit unless any such Unit Owner consents in writing.

Further, Declarant may unilaterally amend this Declaration for any other purpose; provided such amendment does not materially adversely affect the substantive rights of any Owners to use and enjoy their Units hereunder or adversely affect title to any Unit without the consent of the Owner of such Unit.

(b) By the Owners. This Declaration may be amended upon the affirmative vote, written consent, or any combination thereof, of Members representing at least two-thirds (2/3) of the total eligible votes in the Association and the consent of

Declarant and Approved Builder until their rights have terminated as provided in Article XIII hereof.

No provision of this Declaration which reserves or grants special rights to the Approved Builder shall be amended without the prior written consent of the Approved Builder.

(c) By the Board. The Board of Directors, with the written consent of the Declarant and without a vote of the Members, may amend this Declaration: (i) to elect to be governed by and thereafter comply with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 *et seq.*; (ii) to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (iii) to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (iv) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (v) to enable any governmental agency or private insurance company, including without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, such amendment shall not adversely affect the title to any Unit unless the Owner of such Unit consents thereto in writing.

The consent of the Declarant or Approved Builder to any amendment shall be evidenced by the execution of said amendment by Declarant or Approved Builder. The consent of the requisite number of Members to any amendment shall be evidenced by the execution of the amendment by said Members, or, in the alternative, the sworn statement of the President, Vice President or Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Members was lawfully obtained and that any notices required by the Declaration, By-Laws, Articles of Incorporation or Georgia law were given.

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.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignees of such right or privilege.

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

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

15.4. Litigation. No judicial, administrative, or arbitration proceeding for any claim, grievance, or dispute arising out of, resulting from or relating to anything other than the design, construction or repair of improvements on the Community, shall be commenced or prosecuted by the Association unless approved in writing by seventy-five percent (75%) of the total eligible Association vote taken at a meeting duly called pursuant to the By-Laws for such purpose. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens or the filing of lawsuits for injunctive relief); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to *ad valorem* taxation; (d) counter-claims brought by the Association in proceedings instituted against it; (e) claims set forth in Section 14.2; or (f) actions brought by the Association against any contractor, vendor or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

15.5. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same. In the event of a conflict between this Declaration and the provisions set forth in any Supplemental Declaration, the more restrictive provision shall control.

15.6. Compliance. Every Owner and occupant of any Unit shall comply with the Governing Documents and the failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.7. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board or its designee at least

seven (7) 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 such notice is received by the Board, notwithstanding the transfer of title.

15.8. Exhibits. Exhibit "A" and Exhibit "B" attached to this Declaration are incorporated by this reference and the amendment of such exhibits shall be governed by the provisions of Section 15.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

15.9. Nondiscrimination. No action shall be taken by the Declarant, Approved Builder, the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

15.10. Notices. Except as otherwise specifically provided in such document(s), as the case may be, notices provided for in this Declaration or the Articles or By-Laws shall be in writing, and shall be addressed to an Owner at the address of the Unit and to the Declarant, Approved Builder and to the Association at the address of their respective registered agent on file with the Secretary of State of the State of Georgia. Any Owner may designate a different address, including an electronic mail address, for notices to such Owner by giving written notice to the Association. Owners shall keep the Association advised of their current address and phone number(s) where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by Federal Express or other reputable commercial courier service, or issued electronically in accordance with Chapter 12 of Title 10 of the Official Code of Georgia Annotated, the "Uniform Electronic Transactions Act". The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 6<sup>th</sup> day of October, 2021.

DECLARANT: FORESTAR (USA) REAL ESTATE GROUP, INC., a Delaware corporation

By: [Signature]  
Print Name: Eric Masaschi  
Title: Vice President

Signed, sealed, and delivered this 5 day of October, 2021 in the presence of:

[CORPORATE SEAL]

[Signature]

WITNESS

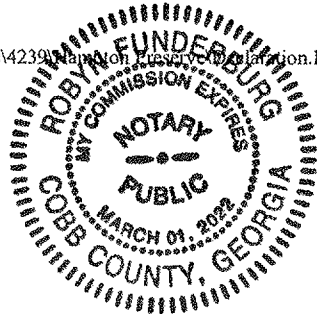
[Signature]

NOTARY PUBLIC

My Commission Expires: 3/1/2022

[AFFIX NOTARY SEAL]

P:\Clients\4239\Maplewood Preserve\Maplewood Preserve Hampton Preserve.doc



## EXHIBIT "A"

Land Initially Submitted

All that tract or parcel of land lying and being in Land Lot 133 and 156, of the 7th District, in the City of McDonough, Henry County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin found (2" open top pipe) located on the southerly right-of-way of Bridges Road 334.91 feet from the intersection of the said southerly right-of-way of Bridges Road (50' right-of-way) and the northwesterly right-of-way of Hampton Street (aka SR 50 & SR 81) (variable right-of-way) as measured in a westerly direction along and following the said southerly right-of-way of Bridges Road; having thus established the TRUE POINT OF BEGINNING leaving said iron pin and right-of-way and running  $S01^{\circ}46'35''W$  for a distance of 235.74 feet to an iron pin set (#4 rebar w/cap); thence running  $S89^{\circ}28'38''E$  for a distance of 166.85 feet to an iron pin set (#4 rebar w/cap) located on the said northwesterly right-of-way of Hampton Street (aka SR 20 & SR 81); thence running  $S41^{\circ}17'02''W$  along the said northwesterly right-of-way of Hampton Street (aka SR 20 & SR 81) for a distance of 595.97 feet to an iron pin found (1" open top pipe); thence leaving said right-of-way and running  $N84^{\circ}36'11''W$  for a distance of 219.67 feet to an iron pin found (2" open top pipe); thence running  $N84^{\circ}20'45''W$  for a distance of 122.61 feet to an iron pin found (2" open top pipe); thence running  $N05^{\circ}34'40''E$  for a distance of 441.69 feet to an iron pin found (#4 rebar); thence  $N87^{\circ}25'26''W$  for a distance of 128.42 feet to an iron pin found (#5 rebar); thence running  $N01^{\circ}45'57''E$  for a distance of 233.96 feet to an iron pin set (#4 rebar w/cap) located on the said southerly right-of-way of Bridges Road; thence running  $S87^{\circ}38'00''E$  along the said southerly right-of-way of Bridges Road for a distance of 653.09 feet to an iron pin found which is the TRUE POINT OF BEGINNING.

EXHIBIT "B"

Land Subject to Annexation

The following property is not subject to this Declaration, but may be annexed in accordance with the terms of the Declaration. Any parcel or tract of land which is:

1. Adjacent to the property described on Exhibit "A" or adjacent to property previously annexed to the Declaration.
  
2. Located within a one (1) mile radius of the property described in Exhibit "A".

## EXHIBIT "C"

### Initial Use Restrictions and Rules

The purpose of the initial Use Restrictions and Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IX (Declarant or the ARC, as appropriate) have the 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 for the Community. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Declarant or the Association, acting through the Board, from taking enforcement action in any appropriate circumstances.

The following use restrictions and rules shall apply to the entire Community until such time as they are modified pursuant to Article X of the Declaration or amended pursuant to Section 15.2 hereof.

1. General. The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any sales professionals retained by Declarant or Approved Builder to assist in the marketing or sale of property described on Exhibit "A" or Exhibit "B," offices for any property manager retained by the Association or business offices for Declarant, Approved Builder or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Rules and Restrictions. The Community is subject to the following rules and restrictions unless expressly authorized by and then subject to such conditions as may be imposed by the Board of Directors:

(a) Parking. The following restrictions shall apply to all Owners, occupants, invitees and guests; provided, however, 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 to or to make a delivery within a Unit or the Common Area;

(i) Vehicles shall be parked only in appropriate parking spaces serving the Unit or other designated parking areas established by the Board, if any. No on street parking shall be permitted except in connection with special events as approved by the Board or as otherwise approved by the Board in writing. Unless otherwise provided by the Board, parking in the parking spaces located adjacent to the mailbox kiosk area shall be for short term, temporary parking for the limited purpose of

and for such reasonable period of time as may be necessary to retrieve mail, and may be subject to such additional rules and regulations as the Board may adopt from time to time. All parking shall be subject to such additional reasonable rules and regulations as the Board may adopt from time to time in its sole discretion. The term "vehicles," as used herein, shall include, without limitation, trailers, motorcycles, minibikes, trucks, campers, buses, vans and automobiles. The term "parking areas serving the Unit" shall refer to the number of garage parking spaces serving the residential dwelling located on a Unit and if, and only if, the Owner or occupants of a Unit have more vehicles than the number of garage parking spaces, those excess vehicles which are an Owners or occupant's primary means of transportation on a regular basis may be parked on the driveway on the Unit; provided, however, no vehicle parked in the driveway of a Unit shall encroach onto any grassy or landscaped area, the sidewalks or any street in the Community.

(ii) Parking of commercial vehicles or equipment, tractor trailer cabs, commercial equipment, mobile homes, recreational vehicles, ATVs, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than in enclosed garages is prohibited; provided, however, small panel trucks with company names and/or logos on the sides that are used as primary vehicles shall be permitted;

(iii) Any commercial vehicles or equipment, tractor trailer cabs, commercial equipment, mobile homes, recreational vehicles, ATVs, boats and other watercraft, trailers, stored vehicles or inoperable vehicles parked in violation of subsection (i) hereof is subject to removal without further notice. The costs of such removal shall be a Specific Assessment against the Unit of the Owner of such vehicle, commercial vehicle, boat, motorhome, trailer, ATV, boat and other watercraft or other vehicles;

(iv) Garage doors shall be kept closed except during times of ingress and egress from the garage and garages shall be used primarily for the parking of vehicles and not for storage or other purposes;

(v) Trucks with mounted campers which are an Owner or occupants' primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal;

(vi) If any vehicle is parked on any portion of the Common Area, including, without limitation, the private Community streets, in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may cause the vehicle to be towed or booted, subject to compliance with applicable law, including any notice required thereby. The notice may be a general notice by signage or may be placed on the vehicle, if and as allowed under applicable law, as the case may be. If a vehicle is parked in a fire lane, is blocking another vehicle,

is obstructing the flow of traffic, is parked on any landscaped area or otherwise creates a hazardous condition, the Board or agent of the Association may have the vehicle towed immediately, subject to compliance with applicable law. If a vehicle is towed or booted in accordance with this subparagraph and applicable law, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing or booting activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot; and

(vii) Nothing herein shall prevent the Declarant, Approved Builder and their respective agents, builders, contractors, subcontractors and assigns from parking vehicles on any and all streets during regular business hours to facilitate the construction, development, maintenance and build-out of the Community.

(viii) Portions of the Common Area contain striped and lined parking spaces for use by the guests of Owners and occupants, as may be shown on the Final Plat ("Guest Parking Spaces"). The Guest Parking Spaces shall be on a first-come, first served basis and are reserved for the exclusive use of the guests of Owners and occupants. For purposes of this subsection (viii), a guest is defined as an individual who resides in the Unit for less than ten (10) consecutive days. A guest may park his or her vehicle in a Guest Parking Space for up to ten (10) consecutive days; provided, however, the temporary removal of a vehicle from a Guest Parking Space or the relocation of a vehicle from one Guest Parking Space to another Guest Parking Space shall not be sufficient to establish compliance with this restriction. Any guest residing at a Unit for more than ten (10) consecutive days shall be deemed to be an occupant and must park his or her vehicle in either the garage or driveway serving the Unit. Owners and occupants are prohibited from parking vehicles in the Guest Parking Spaces. Any guest, Owner or occupant who fails to comply with the provisions set forth in this subsection shall be subject to the remedies of the Association as set forth in subsection (vi) above and any other remedies available to the Association under this Declaration or Georgia law. The Board of Directors shall have the right to promulgate additional rules and regulations regarding guest parking in the Community.

(ix) All vehicular traffic on the private streets in the Community shall be subject to the provisions of state and local laws concerning the 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, without limitation, imposing reasonable safety measures and speed limits. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying and collecting fines for the violation thereof. In the event of a conflict between the provisions of state and local laws and any rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any

type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the streets in the Community shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and occupants.

(b) Animals. Other than a reasonable number of dogs, cats, or other usual and common household pets, as determined by the Board in its sole discretion, raising, breeding, or keeping animals of any kind, including, without limitation, livestock or poultry, is prohibited. Animals which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the animal owner fails to honor such request, the Board may institute legal action to have the animal removed and all costs associated therewith, including, without limitation, reasonable attorneys' fees actually incurred, shall be a Specific Assessment against the Unit. Dogs shall be kept on a leash whenever outside of a dwelling located on a Unit and not in an enclosed yard. Pet owners are required to clean up after pets. Pets shall be registered, licensed, and inoculated as required by law. Failure to comply with these restrictions may result in fines as provided herein and in the By-Laws. No dog runs, runners or exterior pens for household pets shall be erected or maintained on any Unit unless approved in accordance with the provisions of Article IX hereof. The Board of Directors shall have the right to adopt additional rules and regulations designed to minimize damage and disturbance to other Owners and occupants including, without limitation, restrictions requiring damage deposits, waste removal, leash controls and noise controls.

(c) Signs. No sign of any kind shall be erected by an Owner or occupant within the Community without the prior written consent of the Reviewer or in compliance with applicable Design Guidelines. Notwithstanding the foregoing, the Board, Approved Builder and the Declarant shall have the right to erect reasonable and appropriate signs, including, without limitation, signs relating to the development, construction, marketing or sales of residential dwellings located on Units in the Community. The Board shall have the right to impose reasonable, time, place and manner restrictions governing the display and placement of signs in the Community. The Board may impose a reasonable fine per day for the display of any sign which violates this provision and is not removed within twenty-four (24) hours after written demand is delivered to the Owner at that Unit. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of a Unit as a purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

(d) Business. An Owner or occupant residing in a Unit may conduct business activities within the residential dwelling located on the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Unit; (ii) the business activity conforms to all zoning

requirements for the Community; (iii) the business activity does not involve excessive visitation to the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Community; (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board; or (v) does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage, regardless of whether: (A) such activity is engaged in full or part-time; (B) such activity is intended to or does generate a profit; or (C) a license is required. This subsection shall not apply to any activity conducted by Declarant, Approved Builder, or any other builder approved by Declarant with respect to Declarant's or Approved Builder's development and/or sale of the Community or Declarant's or Approved Builder's use of any Units which they own within the Community.

(e) Trash Cans. Unless otherwise provided by the Board, trash cans and recycle bins shall not be stored in the driveway other than the day of trash collection. Trash and recycling receptacles stored in side yards must be screened from view. Such screening design and materials must be approved by the Reviewer as provided in Article IX hereof or consistent with applicable Design Guidelines. The Board of Directors shall have the authority to adopt rules and regulations governing trash removal and/or recycling in the Community.

(f) Gardening Materials. Garden hoses, hose reels, sprinklers, and other gardening material and equipment must be stored out of view from adjacent Units and the public right-of-way when not in use.

(g) Garages. Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area is not permitted without the prior written approval of the Reviewer pursuant to Article IX.

(h) Satellite Dishes. No exterior antenna, receiving dish or similar apparatus of any kind for receiving and/or transmitting audio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Unit, unless approved in accordance with the provisions of Article IX hereof or in compliance with applicable Design Guidelines; provided, however, no approval shall be necessary to install the following on a residential dwelling located on a Unit: (i) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services or antennas designed to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (ii) antennas designed to receive video programming services via multi-point distribution services or antennas designed to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (iii) antennas that are designed and intended to receive television broadcast signals.

Owners shall install any permitted antennae on the rear of the dwelling located on the Unit unless such installation: (i) imposes unreasonable delay or prevents the use of the antennae; (ii) unreasonably increases the cost of installation; or (iii) an acceptable quality signal cannot otherwise be obtained.

(i) Fences. Written approval must be obtained from the Reviewer prior to any placement, erection, or installation of any fence or fencing type barrier of any kind on a Unit. Under no circumstances shall any fence be placed, erected, allowed, or maintained upon any Unit closer to the street than the rear one-third of the residence located on the Unit. Additional restrictions may apply to corner lots. Fence types are determined by the Declarant and/or Approved Builder for the Community-Wide Standard and may be set forth in the Design Guidelines, but other types may be approved on an individual basis. Notwithstanding the foregoing, Declarant or Approved Builder shall have the right to erect fencing of any type, at any location, on any Unit during the period that such Unit is being used by Declarant or Approved Builder as a model home. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

(j) Miscellaneous. Written approval must be obtained from the Reviewer prior to any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of a Unit in accordance with the provisions of Article IX of the Declaration unless the same is otherwise permitted in the Design Guidelines. This shall include, without limitation, signs, permanent basketball hoops, swing sets and similar sports and play equipment; hedges, walls, dog runs, or animal pens, of any kind; garbage cans; woodpiles; and swimming pools.

(k) Portable Play Equipment. Equipment, including, soccer goals, pitching/catching devices, children's toys, bicycles, tricycles, basketball goals, regardless of size, and other such items must be stored out of view from adjacent Units and the public right-of-way when not in use.

(l) Flags. No approval under Article IX of this Declaration shall be required for any Owner or occupant to display the flag of the United States of America and the current flag of the State of Georgia on a Unit in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors of the Association may promulgate reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag located on a Unit in the Community; provided, however, no rule or regulation enacted by the Declarant or the Association shall have the effect of prohibiting any Owner or occupant

from displaying the flag of the United States of America on any Unit in the Community in contravention of the Freedom to Display the American Flag Act of 2005.

(m) Storm Water Detention/Retention Ponds. Except as herein provided, all storm water retention or detention ponds within the Community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the prior written consent of the Board of Directors. The Association, Approved Builder, the Declarant and their respective officers, directors, members, employees, representatives or agents shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any storm water detention/retention pond within the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any body of water within the Community. Applicable governmental agencies, the Declarant and the Association shall have the sole right to control the water level of all bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any storm water retention pond, creek or stream in the Community. Owners shall not be permitted to withdraw water from any storm water detention/retention pond without the prior written consent of the Board of Directors.

(n) Heating of Units in Colder Months. In order to prevent water pipes from breaking during colder months of the year resulting in damage to Units, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Units shall be maintained with the heat operating and at a minimum of fifty degrees (50°) Fahrenheit when the temperature is forecasted to or does reach thirty two degrees (32°) Fahrenheit or below. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. If the heating equipment is not working, the Owner shall: (i) immediately inform the Association and adjacent Unit Owners of such equipment failure and of the time needed in order to repair the equipment; and (ii) take reasonable steps to keep the Unit heated sufficiently to prevent water pipes from breaking.

(o) Lighting. Exterior lighting on any Unit visible from the street shall not be permitted, except for: (i) approved lighting as originally installed on a Unit; (ii) one decorative post light; (iii) street lights in conformity with an established street lighting program for the Community; (iv) seasonal decorative lights for a period of thirty (30) days from the date of installation, subject to such reasonable rules and regulations as the Board may adopt from time to time; (v) front house illumination of model homes; or (vi) other lighting approved under and pursuant to Article 6 hereof or as otherwise permitted under applicable Architectural Guidelines.

(p) Impairment of Units and Easements. No Owner shall take any action that will impair the structural soundness of any Unit or dwelling or other improvement thereon, or any easement or other interest in real property, nor allow any condition to exist which will materially and/or adversely affect the Common Area, the other Units or their Owners or occupants.

(q) Address Markers. All address markers and/or address posts shall be of the same type and color as originally installed on a Unit and any modification to or change in the address markers and/or address posts shall require the prior written approval pursuant to Article IX hereof.

3. Prohibited Conditions. The following shall be prohibited within the Community:

(a) Quiet Enjoyment. Any activity which emits foul or obnoxious odors outside of a Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units; 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 diminish or destroy the enjoyment of the Community (the inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board); use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes; pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit. Each Owner hereby agrees that Declarant, Approved Builder and their employees and subcontractors may engage in construction activities in the Community and that such activities shall not be in violation of this subsection;

(b) Laws. Any activity which violates local, state, or federal laws or regulations is prohibited. However, the Board shall have no obligation to take enforcement action in the event of a violation;

(c) Disrepair. Structures, equipment, or other items on the exterior portions of a Unit which have become unsightly, rusty, dilapidated, or otherwise fallen into disrepair;

(d) Irrigation. Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, or other ground or surface waters within the Community, except that Declarant and the Association shall have the right to draw water from such sources;

(e) Motorized vehicles. Motorized vehicles on pathways, trails or unpaved Common Areas, except for public safety vehicles, vehicles authorized by the Board and vehicles used by any person with a disability, including wheelchairs or other necessary transportation devices;

(f) Annoyance. Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units; provided, however, construction activities on Units in the Community by the Declarant or its agents or employees shall not be deemed an annoyance as provided herein;

(g) Burning. Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Dumping. Dumping of grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, storm water detention/retention pond, lake, or elsewhere within the Community is prohibited. Fertilizers and pre-emergents may be applied to landscaping provided care is taken to minimize runoff;

(i) Trash. Accumulation of rubbish, trash, or garbage, except between regular garbage pick ups, and then only in approved containers;

(j) Drainage. Obstruction or rechanneling of drainage flows after the installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right;

(k) Subdivision. 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 re-plat Units which it owns or other Units with the consent of the Owner thereof;

(l) Common Area Landscaping. Except as may otherwise be permitted under this Declaration, removing, altering or pruning of landscaping on the Common Area;

(m) Firearms. The discharge of firearms with the exception of law enforcement officers during the performance of their duties; provided, the Board shall have no obligation to take action to prevent the discharge of firearms. The term "firearms" includes "B-B" guns, pellet guns, archery equipment and firearms of all types, regardless of size;

(n) Fuel. On site storage of fuel, 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 the operation of maintenance vehicles, generators, and similar equipment;

(o) Vegetation. Any activities which materially disturb or destroy the vegetation, wildlife, or air quality within or outside of the Community, or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(p) Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. The side of all window treatments, with the exception of stained wood blinds or shutters, which can be seen at any time from the outside of any structure located on a Unit shall be white, off-white or such other color as may be permitted in the Design Guidelines. Bed sheets, blankets, towels, black plastic, paper and similar type items shall not be used as window treatments; and

(q) Air Conditioning Units. Installation and use of window air conditioning units.