



Return to:

Weissman, Nowack, Curry & Wilco, P.C.  
One Alliance Center, 4th Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
Attention: Jane C. Kotake, Esq.

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

**FOR**

**SWEET BRIAR FARMS**

Weissman Nowack  
Curry & Wilco, P.C.   
ATTORNEYS AT LAW

**One Alliance Center, 4<sup>th</sup> Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
(404) 926-4500**

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STATE OF GEORGIA  
COUNTY OF CHEROKEE

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
SWEET BRIAR FARMS**

THIS DECLARATION, consisting of covenants, conditions, easements and restrictions, is made on the date set forth below by OH JC Trickum, LLC, a Georgia limited liability company ("Declarant," as further defined in Article 1 of this Declaration).

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described in Section 2.1 of this Declaration;

WHEREAS, Declarant desires to subject the real property described in Section 2.1 to the provisions of this Declaration and to provide for the subjecting of other real property to the provisions of this Declaration;

WHEREAS, Declarant desires the real property described in Section 2.1 of this Declaration to be used to create housing for older persons in accordance with 42 U.S.C.A. § 3607(b)(2)(C); and

NOW, THEREFORE, Declarant declares that, subject to the provisions of Article 15 of this Declaration, the real property described in Section 2.1 of this Declaration, including the improvements constructed or to be constructed thereon, is subjected to the provisions of this Declaration, and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all Persons having any right, title, or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors in title, and assigns and shall be for the benefit of all owners of the property subject to this Declaration.

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**THIS DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE COMMUNITY TO THE TERMS OF THE GEORGIA PROPERTY OWNERS ASSOCIATION ACT, O.C.G.A. §44-3-220, ET SEQ.**

**THIS DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE COMMUNITY TO THE TERMS OF THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70, ET SEQ.**



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## ARTICLE 1. DEFINITIONS

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The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

**Section 1.1. Adjacent Properties** shall have the meaning set forth in Section 16.22(b) of this Declaration.

**Section 1.2. Approved Builder** shall mean OH JC Trickum Construction, LLC, a Georgia limited liability company for so long as it owns at least one (1) Lot for the purpose of construction of a Residence and resale of the Lot and Residence.

**Section 1.3. Architectural Review Committee or ARC** shall mean the committee established to exercise the architectural review powers set forth in Article 6 of this Declaration, which shall be the Board of Directors unless by resolution the Board appoints a separate Architectural Review Committee. Notwithstanding the foregoing, during the Sales Period, Declarant shall have the right to appoint all members of the Architectural Review Committee.

**Section 1.4. Area of Common Responsibility** shall mean and refer to the Common Property, together with other areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.

**Section 1.5. Articles or Articles of Incorporation** shall mean the Articles of Incorporation of Sweet Briar Farms Homeowners Association, Inc., which have been filed with the Secretary of State of Georgia, as amended.

**Section 1.6. Association** shall mean Sweet Briar Farms Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

**Section 1.7. Association Lawn Maintenance** shall have the meaning set forth in Section 10.1 of this Declaration.

**Section 1.8. Board of Directors or Board** shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

**Section 1.9. Bylaws** shall refer to the Bylaws of Sweet Briar Farms Homeowners Association, Inc., attached to this Declaration as Exhibit "B" and made a part of this Declaration, as amended.

**Section 1.10. Common Expenses** shall mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

**Section 1.11. Common Property** shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located in the Community, now or in the future owned by the Association.

**Section 1.12. Community** shall mean and refer to that certain real property and any easements, conditions and other real property interests therein described in Exhibit "A" attached hereto.

**Section 1.13. Community Instruments** shall mean this Declaration and all exhibits hereto (including the Bylaws), the Articles of Incorporation, the Rules and Regulations, and the Design Guidelines, all as may be supplemented or amended from time to time.



**Section 1.14. Community-Wide Standard** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. This determination, however, must be consistent with the Community-Wide Standard originally established by Declarant.

**Section 1.15. Declarant** shall mean and refer to OH JC Trickum, LLC, a Georgia limited liability company, and such of its successors-in-title who shall: (a) acquire from a predecessor "Declarant" all or any portion of the real property described in Exhibit "A" attached hereto and incorporated herein by this reference for the purpose of development or sale; and (b) be designated as Declarant in the deed of transfer by which such successors-in-title shall so acquire its interest in such real property, or by written assignment of Declarant rights in an instrument recorded in the Official Records. In all events, there shall be only one "Declarant" at any one time, and in no event shall more than one (1) Person have the right to exercise the power and authority of "Declarant" at any one time.

**Section 1.16. Declarant Control Period** shall mean the period of time during which Declarant is entitled to appoint and remove the members of the Board of Directors as provided in Section 3.2 of the Bylaws.

**Section 1.17. Design Guidelines** shall mean the architectural guidelines and application and review procedures for the Community that are adopted by the Architectural Review Committee, as may be amended from time to time.

**Section 1.18. Domestic Partner** shall mean any adult who cohabitates with an Owner and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's secretary. A person shall no longer be a Domestic Partner upon receipt by the Association's secretary of a written termination notice, signed by either the Owner or the Domestic Partner.

**Section 1.19. Effective Date** shall mean the date of recording in the Official Records.

**Section 1.20. Electronic Document** shall mean information created, transmitted, received or stored by electronic means and retrievable in humanly perceivable form including, without limitation, e-mail, web pages, electronic documents, and facsimile transmissions.

**Section 1.21. Electronic Signature** shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.

**Section 1.22. Eligible Mortgage Holder** shall mean those holders of first Mortgages secured by Lots in the Community who have requested notice of certain items as set forth in this Declaration.

**Section 1.23. Fair Housing Acts** shall have the meaning set forth in Article 9 of this Declaration.

**Section 1.24. Gate System** shall mean any mechanical gate systems located at the entrances of the Community which limit and/or restrict vehicular access, ingress and egress to and from the Community.

**Section 1.25. Georgia Non-profit Corporation Code** shall mean the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101 *et seq.*, as amended.

**Section 1.26. Lot** shall mean any plot of land in the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family residence site as shown on the Survey.





**Section 1.27. Majority** shall mean those eligible votes by Owners, or other group as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

**Section 1.28. Mortgage** shall mean any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

**Section 1.29. Mortgagee** shall mean the holder of a Mortgage.

**Section 1.30. Occupant** shall mean any natural person (be it an Owner or a tenant or tenant of an Owner) who occupies a Residence for any period of time. Where the context dictates, the term "Occupant" shall also be deemed to include the family members, occasional social guests, tenants, licensees and invitees of the Occupant.

**Section 1.31. Official Records** shall mean the official land records of the Clerk of the Superior Court of Cherokee County, Georgia.

**Section 1.32. Owner** shall mean and refer to the record owner, whether one (1) or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

**Section 1.33. Permittee** shall mean any Occupant and any officer, agent, employee, licensee, customer, vendor, supplier, guest, invitee or contractor of an Owner, Occupant or Declarant.

**Section 1.34. Person** shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), limited liability company, association, trust, or other legal entity.

**Section 1.35. Residence** shall mean an improvement situated upon a Lot intended for independent use and occupancy as a residential dwelling for a single family. A Lot and the improvements located thereon shall not become a "Residence" until the following requirements have been met: (a) a certificate of occupancy has been issued by the appropriate governmental authorities as a prerequisite to the occupancy of such Residence; and (b) the Lot and the Residence located thereon shall have been conveyed to a third party.

**Section 1.36. Rules and Regulations** shall mean the rules and regulations for the Community adopted by the Board of Directors, as may be amended from time to time.

**Section 1.37. Sales Period** shall mean the period commencing on the Effective Date and terminating on the date that Declarant or Approved Builder no longer owns a Lot.

**Section 1.38. Secure Electronic Signature** shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

**Section 1.39. Supplementary Declaration** shall mean an amendment or supplement to this Declaration, which imposes additional restrictions and obligations on the Community or any portion thereof.

**Section 1.40. Survey** shall mean the recorded plat(s) for the Community recorded in the Official Records, as amended.

**Section 1.41. Total Association Vote** shall mean all of the votes attributable to members of the Association (including votes of Declarant), and the consent of Declarant during the Sales Period.



## **ARTICLE 2. PROPERTY SUBJECT TO THIS DECLARATION; CONVEYANCE AND PARTITION OF COMMON PROPERTY**

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**Section 2.1. Submitted Property.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration is the real property described in Exhibit "A" attached hereto and made a part of this Declaration.

**Section 2.2. Other Property.** Only the real property described in Exhibit "A" is made subject to this Declaration. However, by one (1) or more Supplementary Declaration, other real property may be subjected to this Declaration, as provided in Article 15 hereof.

**Section 2.3. Conveyance of Common Property by Declarant to the Association.** Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

**Section 2.4. Removal of Improvements on Common Property by Declarant.** During the Sales Period, Declarant shall have the right, privilege, and option from time to time to remove, add, reconfigure, relocate, modify, and alter any and all improvements located on the Common Property.

**Section 2.5. Partition of the Common Property.** The Common Property shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

## **ARTICLE 3. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

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**Section 3.1. Membership.** Every Person who is the record owner of a fee interest in any Lot, is subject to this Declaration shall automatically be a member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall go along with and may not be separated from ownership of any Lot.

**Section 3.2. Voting.** Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Association's secretary prior to any meeting. If the Association's secretary is not instructed, the Lot's vote shall be suspended in the event more than one (1) Owner of a Lot attempts to cast it.

## **ARTICLE 4. ASSOCIATION RIGHTS AND RESTRICTIONS; VARIANCES**

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### **Section 4.1. Association Rights and Restrictions.**

(a) **General.** The Association, acting through its Board of Directors, shall have the right and authority, in addition to, and not in limitation of, all other rights it may have, to:



(i) make and to enforce reasonable Rules and Regulations governing the use of the Community, including the Lots and the Common Property;

(ii) enforce use restrictions, other Declaration and Bylaws provisions, and Rules and Regulations by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Rules and Regulations by either the Association or, in an appropriate case, by an aggrieved Owner;

(iii) grant and accept permits, leases, licenses, utility easements, and other easements necessary for the proper maintenance or operation of the Community under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Community;

(iv) control, manage, operate and, in the Board's discretion, maintain, replace, alter or improve all portions of the Community for which the Association is assigned maintenance responsibility under this Declaration, and to pay all taxes or other expenses with respect to same;

(v) to represent and act on behalf of the Owners in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(vi) represent the Owners in dealing with governmental entities on matters related to the Common Property;

(vii) permanently or temporarily close any portion of the Common Property (excluding: (A) any portion of the Common Property the use of which is reasonably necessary for access to or from a Lot, or (B) any portion of the Common Property over, on, upon or which Declarant has an easement) with thirty (30) days' prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open the closed Common Property by a Majority of the Total Association Vote, cast at a duly called special or annual meeting;

(viii) enter onto Lots for maintenance, emergency, security, or life-safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. For purposes of this Section, an emergency justifying immediate entry onto a Lot shall include, but not be limited to the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this Subsection shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Lot shall exist;

(ix) acquire, lease, hold, and dispose of tangible and intangible personal property and real property; and



(x) designate one (1) company to provide exclusive trash removal services to the entire Community.

(b) Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of the Owners as hereinafter provided. The Board shall prepare a budget of the total estimated cost of the litigation or proceeding which shall be submitted to the Owners for a vote along with the estimate of the total cost of the litigation or proceeding made by the attorney being retained by the Association for the litigation or proceeding. No capital contribution or reserve account funds shall be used for funding the costs of litigation or proceedings. The proposed litigation or proceeding, the budget, and the special assessment for litigation, must all be approved by a vote of the Owners representing at least two-thirds (2/3) of the Total Association Vote. This Subsection shall not apply, however, to (i) actions involving imposition and collection of assessments as provided herein, (ii) actions brought by the Association to enforce any covenant in this Declaration (including, without limitation, the foreclosure of liens); (iii) proceedings involving challenges to ad valorem taxation, (iv) counterclaims brought by the Association in proceedings instituted against it, (v) any land-use or zoning proceedings, or (vi) actions brought by the Association for damages in magistrate court.

**Section 4.2. Variances.** Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of the Community Instruments if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

## **ARTICLE 5. ASSESSMENTS**

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**Section 5.1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of administering and operating the Area of Common Responsibility, promoting the common benefit and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors and allowing the Association to fulfill its duties and responsibilities as set forth in Community Instruments.

**Section 5.2. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest not to exceed the maximum rate permitted by law per annum on the principal amount due, and costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of every Person who is an Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for Owner's portion of each assessment coming due while he or she is the Owner of a Lot, and Owner's grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of a grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or by deed in lieu of foreclosure.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association



certifying the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Annual assessments shall be levied at a uniform rate per Lot and shall be paid in such manner and on such dates as are fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, assessments shall be paid in annual installments.

**Section 5.3. Computation of Annual Assessment.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Community during the coming year, which may include, if necessary, a capital contribution or reserve in accordance with a capital budget separately prepared.

The annual assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The Board shall cause the proposed budget and assessments to be levied against each Lot for the following year to be delivered to the members at least thirty (30) days' prior to the proposed effective date thereof. The budget and assessment shall become effective unless disapproved at a meeting by a Majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the Owners disapproves the proposed budget or the or the Board of Directors fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

**Section 5.4. Special Assessments.** In addition to the other assessments authorized herein, the Board may, at any time, levy a special assessment against all Owners to cover unbudgeted expenses or expenses in excess of those budgeted, notice of which shall be sent to all Owners. Until one hundred percent (100%) of the Community has been developed and conveyed to Owners, any such special assessments must be approved by Declarant.

**Section 5.5. Specific Assessments.** The Board of Directors shall have the power to specifically assess specific Lots pursuant to this Section, in its discretion, as it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article 5 of the Bylaws, the costs and expenses of self-help, and the costs of maintenance performed by the Association which the Owner is responsible for under Article 10 shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for routine maintenance and repair of items that are the maintenance responsibility of the Association:

- (a) expenses of the Association which benefit less than all of the Lots in the Community may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received;
- (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received; and
- (c) other expenses specifically contemplated as specific assessments in this Declaration.



**Section 5.6. Lien for Assessments.** All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of the Association from the time the sums become due and payable. The Association shall have the right, but not the obligation to evidence the existence of the lien by filing a notice of lien in the Official Records. The lien shall be superior to all other liens and encumbrances on the Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Official Records and all amounts advanced under the terms of and secured by the Mortgage.

All Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded, other than as provided above, shall be deemed to consent that their liens or encumbrances shall be inferior to future liens for assessments, whether or not prior consent is specifically set forth in the instruments creating their liens or encumbrances.

**Section 5.7. Effect of Nonpayment of Assessments: Remedies of the Association.** All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default, as follows:

(a) If any monthly installment of annual assessments or any part thereof is not paid in full by the tenth (10th) day of the month or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of Ten Dollars (\$10) or ten percent (10%) of the amount not paid may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten percent (10%) per annum or such higher rate as may be permitted by the applicable law shall accrue from the due date thereof.

(b) If part payment of assessments and related charges is made, the amount received may be applied first to costs and reasonable attorneys' fees actually incurred, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(c) If assessments, fines or other charges or any part thereof due from an Owner remain delinquent and unpaid for a period greater than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment, fine or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment and of any special assessment without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year, if a monthly installment payment plan is offered by the Association.

(d) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after they become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of this Declaration, the Bylaws, and Georgia law, including reasonable attorneys' fees actually incurred, and suspend the Owner and/or Occupant's right to vote and/or use the Common Property, including the right to bring or park vehicles on the Common Property or have guests bring or park vehicles on the Common Property. However, the Board may not limit pedestrian, medical, fire, police or other health, life-safety, service or emergency vehicle ingress or egress to or from the Lot or deny necessary parking of clearly and properly identified handicapped vehicles used by handicapped Owners or Occupants protected by the Fair Housing Amendments Act of 1988. Prior to suspending parking privileges, the Association shall provide the delinquent Owner or Occupant written notice of its intention to do so, sent by certified mail not less than ten (10) days' prior to the date of such suspension.

**Section 5.8. Commencement of Assessments.** Assessments shall commence as to Lots when the Board of Directors first determines a budget and levies assessments. Except as otherwise provided for herein, the assessments provided for herein shall commence as to each individual Lot on the



date that such Lot has been improved with a Residence for which a certificate of occupancy has been issued and has been conveyed to an Owner who intends to occupy or lease the Residence, or, if the Residence is occupied as a residential dwelling before such conveyance, the date of such occupancy. Any Lot 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 Residence is approved for use as a model home and is not being occupied for residential purposes. Notwithstanding anything to the contrary herein, Declarant and Approved Builder shall not be liable or responsible for the payment of any assessments on the Lots that they respectively own.

**Section 5.9. Initiation Fee.** The purchaser of each Lot at the closing of the sale or resale of a Lot shall pay to the Association an initiation fee in the amount determined by the Board. The initiation fee shall not be deemed an advance payment of annual assessments or special assessments. The Board shall have discretion to increase the initiation fee by resolution of the Board; provided, however, the initiation fee shall not be changed by the Board without Declarant's consent during the Sales Period. Notwithstanding anything to the contrary herein, the initiation fee shall not be due from: (a) any grantee who is the Domestic Partner, spouse or former spouse of the grantor; (b) any grantee that is a wholly-owned entity of the grantor; (c) any grantee to whom a Lot is conveyed by a will or through the law of intestacy; (d) any grantee of a Lot who obtains title pursuant to judicial or nonjudicial foreclosure (or deed in lieu of foreclosure) of any first Mortgage of record or secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot); or (e) any grantee who is an Approved Builder. The initiation fee shall be an assessment, which is the personal obligation of the Owner, and shall constitute a lien, which may be collected as provided in this Article 5.

**Section 5.10. Statement of Account.** Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

**Section 5.11. Capital Reserve Budget and Contribution.** The Board of Directors shall annually prepare a capital reserve budget which shall take into account the number and nature of replaceable assets, including the roads within the Community which are not otherwise maintained on an ongoing basis by a governmental entity, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 5.3 hereof. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

Notwithstanding any other provisions of this Declaration, during the Declarant Control Period, neither Declarant nor the directors and officers of the Association shall be required to prepare a capital reserve budget, set any other capital reserve contribution, or otherwise collect amounts for capital reserves.

**Section 5.12. Budget Deficits During Declarant Control.** During the Declarant Control Period, Declarant may, but shall have no obligation to, (a) advance funds to the Association in the form of a loan or gift sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances, if in the form of a loan,



shall be evidenced by a promissory note or notes from the Association in favor of Declarant and shall not be deemed a conflict of interest by the directors and officers appointed by Declarant; provided, however, the failure to execute a note shall in no way diminish or eliminate the obligation of the Association to repay to Declarant all sums which Declarant has loaned the Association, or (b) 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. Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

## **ARTICLE 6. ARCHITECTURAL STANDARDS**

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**Section 6.1. General.** No structure or improvement, including, but not but not limited to, a Residence or outbuilding (as described in Section 7.28 below), playhouse or play equipment, fence, wall or swimming pool shall be placed, erected, installed, or maintained upon any Lot, and no construction or modification (which shall include staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of plants, trees, or shrubs other than as may be permitted in Articles 7, 8 and 10, but shall exclude the replacement of annual or perennial flowers in pre-approved planting beds and the replacement of dead or diseased trees or shrubs with like plant material) shall take place except in strict compliance with this Article 6 and until complete final plans and specifications for the proposed construction and/or modification showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location and floor plan have been submitted to and approved by the Architectural Review Committee. For the purposes of this Article 6, a change in the exterior paint color of a Residence or other exterior redecorating shall be considered an exterior alteration. Notwithstanding the foregoing, nothing contained in this Declaration shall be construed to limit the right of an Owner to remodel the interior of a Residence or to paint the interior of Owner's Residence any color desired; provided, however, modifications or alterations to the interior of screened porches, patios, and any other portion of a Residence visible from outside the Lot shall be subject to the approval by the Architectural Review Committee. An Approved Builder may submit its standard Residence plans for approval under this Article 6, which approval will not be unreasonably withheld, conditioned or delayed, and thereafter no further approval shall be required under this Article 6 for such Approved Builder to construct a Residence that is consistent with the approved standard Residence plans.

The primary purpose of these architectural requirements is to protect and preserve property values in the Community by maintaining architectural and aesthetic harmony and compatibility among the Lots and the structures on the Lots in the Community. The architectural requirements and standards may be designed and applied to reflect that Lots within the Community are of varying sizes, topographies and locations, and those improvements and modifications suitable for one Lot may be inappropriate for another Lot. Therefore, the Architectural Review Committee is authorized to apply or adopt different standards for different Lots to reflect the varying sizes and layouts of Lots within the Community. Specifically, the Architectural Review Committee may, for example, allow an improvement, modification or change which cannot be seen from any street or other Lot within the Community at any time during the year, including winter, but prohibit the same change if it can be seen from any street or other Lot within the Community.

This Article shall not apply to the activities of Declarant or Approved Builder (except as provided above), or their affiliates or to improvements to the Common Property made by or on behalf of the Association. This Article may not be amended without the written consent of Declarant until: (a) the expiration of the Sales Period; and (b) each Lot has been improved with a Residence.

**Section 6.2. Architectural Review Committee.** Declarant shall have the right to appoint all members of the Architectural Review Committee during the Sales Period. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant and recorded in the Official Records. After the expiration of the Sales Period, the Board of Directors shall either appoint the





members of the Architectural Review Committee or adopt a resolution making the Board of Directors the Architectural Review Committee. The Board may employ for the Architectural Review Committee architects, engineers, or other Persons necessary to enable the Architectural Review Committee to perform its review. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, who shall have full authority to act on behalf of the Architectural Review Committee for all matters delegated. A review fee in a reasonable amount may be charged.

**Section 6.3. Guidelines and Procedures.** Declarant may prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") that shall be applicable to all construction activities within the Community. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which vary from one portion of the Community to another depending upon the location, unique characteristics, and intended use.

The Architectural Review Committee shall have sole and full authority to adopt and amend the Design Guidelines from time to time, without the consent of the Owners. The Architectural Review Committee shall make the Design Guidelines, if any, available to Owners and Approved Builder, and all such Persons shall conduct their activities in strict accordance with such Design Guidelines. In the discretion of the Architectural Review Committee, such Design Guidelines may be recorded in the Official Records, in which event the recorded version, as it may unilaterally be amended from time to time by the Architectural Review Committee by recordation of amendments thereto, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

Any amendments to the Design Guidelines adopted from time to time by the Architectural Review Committee in accordance with this Section shall apply to construction and modifications approved after the date of such amendment only, and shall not apply to plans or specifications previously approved or require modifications to or removal of structures previously approved by the Architectural Review Committee.

In the event that the Architectural Review Committee fails to approve or to disapprove any application within thirty (30) days after submission in writing to, and actual receipt by, the Architectural Review Committee of all information and materials reasonably requested, the application shall be deemed approved. However no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Architectural Review Committee pursuant to Section 6.6 below.

The Architectural Review Committee shall be the only judge of the plans with regard to the requirements of this Article 6 and may withhold approval for any reason, including purely aesthetic considerations. The Architectural Review Committee shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. If an Owner does not comply with this Section, the Board may record in the Official Records a notice of violation naming the violating Owner in addition to any other available remedies.

**Section 6.4. DISCLAIMER. THE ARCHITECTURAL REVIEW COMMITTEE AND THE BOARD OF DIRECTORS DO NOT WARRANT OR REPRESENT, THAT THEIR DECISIONS UNDER THIS ARTICLE 6 CONSTITUTE, AND THEIR DECISIONS SHALL NOT BE INTERPRETED AS CONSTITUTING, AN APPROVAL AS TO COMPLIANCE WITH ANY BUILDING CODE, REGULATION OR ORDINANCE, OR ANY OTHER CODE, REGULATION, ORDINANCE OR LAW. DECLARANT, APPROVED BUILDER, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE SHALL NOT BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, OR FOR**



**ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. IN ADDITION, DECLARANT, APPROVED BUILDER, THE BOARD OF DIRECTORS, THE ARCHITECTURAL REVIEW COMMITTEE OR MEMBER OF ANY OF THE FOREGOING SHALL NOT BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE MANNER OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY LOT.**

**Section 6.5. No Waiver.** The approval of the Architectural Review Committee of any proposals, plans and specifications, or drawings, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or other matters later submitted for approval or consent.

**Section 6.6. No Waiver of Future Approvals.** The approval of either the Architectural Review Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

**Section 6.7. Variance.** The Architectural Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall: (a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Declaration; or (c) estop the Architectural Review Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

**Section 6.8. Enforcement.** Any construction, alteration, or other work done in violation of this Article 6 shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, fines, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a specific assessment pursuant to Section 5.5 hereof.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article 6 and the Design Guidelines may be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the Bylaws. In such event, the Association and its officers and directors shall not be held liable to any Person for exercising the rights granted by this Section.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article 6 and the decisions of the Architectural Review Committee.

**Section 6.9. Commencement of Construction.** All changes, modifications and improvements approved by the Architectural Review Committee, must be commenced within six (6) months from the date of approval. If not commenced within six (6) months from the date of such approval, then such approval shall be deemed revoked by the Architectural Review Committee, unless the Architectural Review Committee gives a written extension for commencing the work. Except for the new construction (or reconstruction after a major casualty) of a Residence and related improvements on a Lot which shall be completed in its entirety



using best reasonable efforts within a time period established by the Architectural Review Committee, all work approved by the Architectural Review Committee shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the Architectural Review Committee. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement. Notwithstanding anything to the contrary stated herein or the Design Guidelines, no changes, modifications, and improvements approved by the Architectural Review Committee shall be commenced until the Owner conspicuously posts an approval permit and such permit shall remain conspicuously until all construction activities are completed. Said approval permit shall serve only to provide notice to the Community that the change, modification, and/or improvement being made to a Lot has been approved by the Architectural Review Committee, and shall be in addition to, and not in lieu of, all necessary permits or approvals required by Cherokee County or other governmental authorities.

## **ARTICLE 7. USE RESTRICTIONS AND RULES**

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**Section 7.1. General.** This Article, beginning at Section 7.2, sets out certain use restrictions that must be complied with by all Owners and Occupants of Lots. These use restrictions may only be amended in the manner provided in Section 16.3 hereof, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete Rules and Regulations applicable to the Community. These Rules and Regulations shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants of Lots until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Total Association Vote and the consent of Declarant (during the Sales Period). Notwithstanding the above, during the Sales Period, no Rules and Regulations that affect Declarant may be adopted, modified, or deleted without Declarant's written consent.

**Section 7.2. Residential Use.** Except as otherwise expressly permitted in this Declaration, each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a Lot may conduct such ancillary business activities within the Residence so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Residence; (b) the business activity does not involve Persons coming onto the Community who do not reside in the Community or door to door solicitation of residents of the Community (other than deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (c) the business activity conforms to all zoning requirements for the Community; (d) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (e) 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 life-safety of other residents of the Community, as may be determined in the sole discretion of the Board of Directors; and (f) the business activity does not result in a materially greater use of the Common Property facilities or Association services.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity. Notwithstanding the above, the use of a Lot by an onsite management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this Section.

**Section 7.3. Number of Occupants.** The maximum number of Occupants in a Residence within the Community shall be limited to two (2) people per bedroom. "Occupancy," for purposes hereof, shall be



defined as staying overnight in a Residence within the Community for a total of more than thirty (30) days, either consecutive or non-consecutive, in any one year period. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Acts or any amendments thereto.

If an Owner of a Lot is a corporation, partnership, trust, or other legal entity not being a natural person, the entity shall give prior notice to the Board of any guests of the entity who will be utilizing the entity's Residence by designating in writing to the Board the name(s) of the person(s) who will utilize the Residence. The designated person(s) to occupy the Residence may not be changed more frequently than once every six (6) months.

#### **Section 7.4. Leasing.**

(a) General. In order to preserve the character of the Community as predominantly Owner-occupied, the leasing of a Residence is permitted only to the extent and on such terms and conditions as are provided in this Section. Moreover, Lots may be leased for residential purposes only and must comply with Article 9 of this Declaration. "Leasing" is defined as regular, exclusive occupancy of a Residence by any Person other than the Owner, including, but not limited to any family member of an Owner who is exclusively occupying a Residence which is not also the residence of and occupied by the Owner thereof. Notwithstanding the foregoing, "Leasing" shall not include occupancy by a roommate or family member of an Owner who along with the Owner occupies a Residence as his or her residence. Except as provided for below, Owners desiring to lease their Residences may do so only if they have applied for and received from the Board of Directors a "Leasing Permit." Such Leasing Permit, upon its issuance, shall allow an Owner to lease Owner's Residence provided that such Leasing is in accordance with the terms of the Leasing Permit and this Section. The Board of Directors shall have the authority to establish conditions as to the duration and use of Leasing Permits consistent with this Section. Except as provided for below, all Leasing Permits shall be valid only as to a specific Owner and Residence and shall not be transferable between either Residences or Owners or to a successor Owner; provided, however, if a Residence is sold subject to an existing lease, the Leasing Permit on said Residence shall be transferred to the new Owner of the Residence in accordance with this Section.

(b) Leasing Permits. In addition to an Owner having the right to request a Leasing Permit, a Person who has a written contract to purchase a Residence ("Buyer") shall have a right to apply for and receive a Leasing Permit. The request of an Owner or Buyer for a Leasing Permit for a Residence shall be approved if current, outstanding Leasing Permits (excluding Residences that are owned and leased by Declarant or the Approved Builder) have not been issued for more than ten (10) of the total number of Residences in the Community ("Leasing Cap"). An Owner who owes the Association any delinquent assessments, fines, or other charges shall not be eligible to receive a Leasing Permit nor shall any Buyer of a Residence be eligible to receive a Leasing Permit if the Owner of such Residence owes the Association any delinquent assessments, fines, or other charges. The Board shall also have the right, but not the obligation, in its discretion to deny a Leasing Permit to an Owner or the Buyer of an Owner's Residence if the Owner or the Owner's Permittee is in violation of the Community Instruments. A Leasing Permit shall be automatically revoked upon the happening of any of the following events:

(i) the failure of a Buyer to close on the acquisition of the Residence as contemplated in the purchase and sale agreement or in any amendment thereto, for any reason whatsoever;

(ii) the failure of an Owner to lease Owner's Residence within one hundred and twenty (120) days of the Leasing Permit having been issued or the failure of a Buyer to lease Owner's Residence within one hundred and twenty days (120) days after the date of the closing of the Residence;



(iii) the failure of an Owner to have Owner's Residence leased for any consecutive one hundred and eighty (180) day period thereafter;

(iv) the transfer or conveyance of the Residence to a third party unless there is an existing binding lease agreement for the Residence at the time of the transfer and conveyance that is assigned to the new Owner and remains in effect after the transfer or conveyance;

(v) when an Owner fails to pay all delinquent assessments, fines, or other charges owed to the Association on or before the date being ten (10) days after the Association sends a written notice to the Owner stating that the Owner is more than thirty (30) days delinquent and that the Leasing Permit shall be revoked unless payment is received on or before such date being ten (10) days after the Association sends the written notice; and

(vi) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit.

The Board shall also have the right, but not the obligation, in its discretion, to revoke an Owner's Leasing Permit if the Owner or the Owner's Permittee violate the Community Instruments in a non-monetary manner; provided, however, the Board shall first provide written notice to the Owner and provide the Owner with a right to hearing in the same manner as for fines as set forth in the Bylaws. The Leasing Permit shall be revoked for such non-monetary violation if the Board so determines after a hearing, or upon the last day of the Owner's right to request a hearing if the Owner fails to request a hearing.

An Owner who has been placed on the waiting list for a Leasing Permit may not transfer or assign Owner's position on the waiting list. The Board may remove an Owner from the waiting list of the Owner if more than thirty (30) days delinquent in the payment of any assessments, fines, or other charges owed to the Association or if the Owner or the Owner's Permittee violate the Community Instruments in a non-monetary manner.

(c) Hardship Leasing Permit. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the harm, if any, which will result to the Community if the Hardship Leasing Permit is approved (including, but not limited to, the inability of the Community to meet eligibility requirements for financing in the secondary mortgage market), (iii) the number of Hardship Leasing Permits which have been issued to other Owners, (iv) the Owner's ability to cure the hardship, and (e) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (A) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) months from the date that the Residence was placed on the market, sell the Residence after having made reasonable efforts to do so except at a price below the current appraised market value; (B) where the Owner dies and the Residence is being administered by his or her estate; and (C) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Residence. Hardship Leasing Permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the Hardship Leasing Permit, the Owner is approved for and receives a Leasing Permit. The Board of Directors may revoke a Hardship Leasing Permit if an Owner fails to pay all delinquent assessments, fines, or other charges owed to the Association on or before the date being ten (10) days after the Association sends a written notice to the Owner stating that the Owner is more than thirty (30) days delinquent. The Board shall also have the right, but not the obligation, in its discretion, to revoke an Owner's Hardship Leasing Permit if the Owner or the Owner's Permittee violate in a non-monetary manner the Community Instruments, provided that the Board shall first provide written notice to the Owner and provide the Owner with a right to hearing in the same manner as for fines as set forth in the Bylaws. The Hardship Leasing Permit shall be revoked



for such non-monetary violation if the Board so determines after a hearing, or upon the last day of the Owner's right to request a hearing if the Owner fails to request a hearing.

(d) Leasing Provisions. Leasing which is authorized by Leasing Permit, shall be governed by the following provisions:

(i) Notice. At least seven (7) days prior to entering into the lease of a Residence, the Owner shall provide the Board with a copy of the proposed lease agreement. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any Rules and Regulations adopted pursuant thereto. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed tenant; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(ii) General.

(A) A Residence may be leased (or subleased or assigned) only in its entirety; no fraction or portion of a Residence may be leased (or subleased or assigned) without prior written Board approval.

(B) All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship (but in no event less than thirty (30) days).

(C) A leased Residence may be subleased or assigned; provided, however, such sublease or assignment shall be for the remainder of the term of the initial lease (or any remaining extension thereof) and in no event shall be for less than thirty (30) days.

(D) Within ten (10) days after executing a lease agreement for the lease of a Residence, the Owner shall provide the Board with a copy of the lease and the name of the tenant and all other people occupying the Residence. The Owner must provide the tenant copies of the Community Instruments.

(E) Within ten (10) days after the execution a sublease or assignment agreement for a Residence, the Owner shall provide the Board with a copy of the sublease or assignment agreement and the name of the sub-tenant or assignee and all other people occupying the Residence. The Owner must provide the sub-tenant or assignee copies of the Community Instruments.

(iii) Compliance with Community Instruments. The tenant shall comply with all provisions of the Community Instruments and shall control the conduct of all other Occupants and Permittees of the leased Residence in order to ensure such compliance. The Owner shall cause all Occupants of Owner's Residence to comply with the Community Instruments, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Residence are fully liable and may be sanctioned for any such violation. If the tenant, or a Person living with the tenant, violates the Community Instruments for which a fine is imposed, notice of the violation shall be given to the Owner and the tenant, and such fine may be assessed against the tenant in accordance with Article V of the Bylaws. If the fine is not paid by the tenant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the tenant's failure to pay the fine. Unpaid fines shall constitute a lien against the Residence.



Any violation of the Community Instruments by the tenant, any Occupant, or any Permittee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the tenant in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the tenant for breaches resulting from the violation of the Community Instruments, including the power and authority to evict the tenant as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms of this Declaration. If the Association proceeds to evict the tenant, any costs (including reasonable attorneys' fees and expenses that are actually incurred) associated with the eviction shall be an assessment and lien against the Lot of the Owner in violation.

(e) Liability for Assessments. When an Owner who is leasing Owner's Residence fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the tenant during the period of delinquency. Upon request by the Board, tenant shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by tenant. However, tenant shall not be required to make such payments to the Association in excess of or prior to the due dates for monthly rental payments unpaid at the time of the Board's request. All such payments made by tenant shall reduce, by the same amount, tenant's obligation to make monthly rental payments to lessor. If tenant fails to comply with the Board's request to pay assessments or other charges, tenant shall pay to the Association all amounts authorized under the Declaration as if tenant were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.

(f) Use of Common Elements. An Owner transfers and assigns to the tenant, for the term of the lease of Owner's Residence, any and all rights and privileges that the Owner has to use the Common Elements as a result of owning that Residence, including but not limited to, the use of any and all recreational facilities and other amenities.

(g) Required Lease Provisions. Any lease of a Residence shall be required to contain or incorporate by reference the terms set forth in Subsections (d) and (e) above. If such language is not expressly contained or incorporated by reference therein, then such language shall be incorporated into the lease by the existence of this covenant, and the tenant, by occupancy of the Residence, agrees to the applicability of this covenant and incorporation of the above-referenced language into the lease.

(h) Applicability of Section 7.4. Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by Declarant or Approved Builder (regardless of whether said lease is entered into prior to or after the expiration of the Sales Period), the Association, or the holder of any first recorded Mortgage on a Residence who becomes the Owner of a Residence through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage (collectively the "Exempt Owners"). Such Exempt Owners shall be permitted to lease a Residence without first obtaining a permit in accordance with this Article and such Residences shall not be considered as being leased in determining the maximum number of Residences that may be leased in accordance with this Article. Notwithstanding the foregoing, Subsections (d) and (e) above (except Subsection (b)(ii) above) shall apply to all such leasing transactions; provided, however, any such leases shall be required to have an initial term of at least thirty (30) days. For the purposes of clarification, this Section shall apply to any Person that acquires a Residence from an Exempt Owner (unless such Person is itself an Exempt Owner), including the obligations to obtain a Leasing Permit to lease the acquired Residence as required in this Section.

**Section 7.5. Occupants Bound.** All provisions of the Community Instruments that govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of Residences and guests and invitees of Occupants or Owners. The Owner shall be responsible for insuring



that the Occupant, and the guests, invitees and licensees of the Owner or the Occupant strictly comply with all provisions of the Community Instruments. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

#### **Section 7.6. Vehicles; Parking.**

(a) General. Vehicles shall be parked only in parking areas serving a Lot or other designated parking areas, if any, established by the Board. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trailers, trucks, campers, buses, vans and automobiles. The term "parking areas serving a Lot" shall refer to the number of garage parking spaces, and if and only if the Owner or Occupants of a Lot have more vehicles than the number of garage parking spaces, then those excess cars, trucks or vans (limited to vans used by handicapped persons, mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia department of motor vehicles) which are an Occupant's primary means of transportation on a regular basis may be parked on the driveway located on the Lot. Notwithstanding anything to the contrary stated in this Declaration, with respect to a parking on a driveway, no disabled or stored vehicles (as described in Section 7.6(b) below) and no recreational vehicles (including, but not limited to, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trailers, campers, buses, and trucks with a load capacity of one (1) ton or more) may be parked on a driveway located on a Lot. All parking within the Community shall be subject to such other Rules and Regulations as the Board may adopt from time to time.

(b) Disabled and Stored Vehicles. No vehicle may be left upon any portion of the Community, except in areas described in Subsection (a) above, for a period longer than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle may be removed from the Community by the Board of Directors or the appropriate authority of Cherokee County, Georgia. Any towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, mini-bike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than twenty-four (24) hours may be removed from the Community by the Board of Directors (the temporary removal of such vehicle to break the continuity of the twenty-four (24) period shall not be sufficient to establish compliance with this restriction). Trucks with mounted campers which are used as a 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. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Community except during the time reasonably necessary to provide service or delivery within the Community.

(c) Commercial Vehicles. The term "commercial vehicles" as used herein, shall include, without limitation, any vehicle which bears any indicia of commercial use, including, but not limited to, writing, logos, ladders, ladder racks, signage of a commercial or business nature or vehicles which are not primarily used for the transportation of passengers. Commercial vehicles shall not be permitted in the Community, except if kept in a garage or on the driveway with Board approval; provided, however, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery within the Community.

(d) Remedies of the Association for Noncompliance. If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Rules and Regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the Person that will do the towing and the name and telephone number of a Person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board





or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked on the private streets within the Community such that it is blocking another vehicle or access to a Lot, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, Declarant and its affiliates, the Association and its affiliates, and any director, officer, employee or agent of any of the foregoing shall not be liable to any Person for any claim of damage as a result of the towing activity. The Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

(e) Exemption to Declarant and Approved Builder. Notwithstanding the foregoing, Declarant and Approved Builder, and their respective agents, subcontractors and assigns, shall have the right, during regular business hours, to park vehicles on any and all streets within the Community as needed in order to facilitate the construction, development and build out of the Community.

**Section 7.7. Traffic Regulations.** All vehicular traffic on any streets or alleys in the Community shall be subject to the provisions of the state and local laws concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable Rules and Regulations governing vehicular and pedestrian traffic, including reasonable life-safety measures and speed limits and including modifications of those in force on public streets, within the Community. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of state and local laws and such 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 or alleys 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.

**Section 7.8. Walking Trails.** Except as herein provided, the walking trails within the Community shall be used as foot paths only. Bicycles, roller blades, skate boards, go-carts, minibikes, scooters or motorcycles, with or without electric motors, or similar wheeled means of transportation or recreation shall not be permitted on the paths in the Community; provided, however, this Section shall not prohibit the use of a path by any person with a disability by the use of a wheelchair or other necessary transportation device. In addition, the Board of Directors may adopt such Rules and Regulations as may be deemed appropriate concerning the use of the paths.

**Section 7.9. Animals and Pets.** No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any portion of the Community; provided, however, an Owner or Occupant may keep up to a total of three (3) dogs and three (3) cats per Lot, unless otherwise permitted by the Board of Directors in its sole and absolute discretion. No pets shall be kept, bred or maintained for any commercial purpose, and no improvement for the care, housing, or confinement of any pet, such as dog houses and dog runs, shall be constructed or maintained on any part of the Community. Pets must be kept on a leash at all times when on the Common Property and on a Lot of another Owner. When on the Common Property or a Lot of another Owner, pets must be kept on a leash (or the physical control of a responsible person). Feces left by pets upon any portion of the Community must be removed by the owner of the pet or the person responsible for the pet.

No potbellied pigs, snakes, Pit Bulls (including, but not limited to, American Pit Bull Terriers, American Staffordshire Terriers, Staffordshire Bull Terriers, and Bull Terriers), Rotweillers, Doberman Pinschers (or any mixed breed dog where the predominant breed, in the sole and absolute discretion of the Board of Directors, is any of the foregoing animals), or other animals determined in the Board's sole discretion to be dangerous may be brought onto or kept on the Community at any time. Furthermore, any



pet that endangers the health of any Owner or Occupant (in the Board's sole discretion), makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners or Occupants or to the owner of any property located adjacent to the Community, may be permanently removed by the Board from the Community upon seven (7) days written notice to the owner of such pet. If the Owner or Occupant fails to remove the pet from the Community, the Board may remove the pet. Notwithstanding the foregoing, any pet which, in the Board's sole discretion, presents an immediate danger to the health, life-safety or property of any Occupant of the Community may be removed by the Board without prior written notice to the pet's owner.

All Owners and Occupants keeping pets within the Community shall comply with all applicable governmental ordinances and regulations. Without prejudice to the Board's right to remove any such household pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall also be registered, licensed and inoculated as required by law. Furthermore, any Owner or Occupant who keeps or maintains any pet upon the Community shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Community.

**Section 7.10. Signs.** Except as may be provided for in this Declaration or as may be required by legal proceedings, and except for signs which may be erected by Declarant or Approved Builder, no signs, advertising posters, "For Sale," "For Rent" and other similar signs, flyers, political placards or billboards of any kind shall be erected or placed by an Owner, Occupant or other Person, or permitted to remain on the Community without the prior written consent of the Board or its designee. Notwithstanding the foregoing, the following signs may be displayed on a Lot without the prior written consent of the Board or its designee: (a) one (1) professionally lettered security sign not to exceed four inches (4") by four inches (4") in size; or (b) one (1) professionally lettered "For Sale" sign not to exceed two feet (2') by two feet (2') in size or a "For Sale" sign provided by a professional Realtor®. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. In addition, the Board shall also have the authority to adopt Rules and Regulations permitting temporary signs on Lots announcing birthdays, graduations or other events for limited periods of time. No advertising, directional, or vendor signs shall be permitted within the Community except as authorized by Declarant.

**Section 7.11. Antennas and Satellite Dishes.** Except as provided below and as provided for in the Rules and Regulations, no satellite dish, antenna, or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or radiation shall be erected, used, or maintained on any portion of the Community; provided, however, the Association shall have the right to erect, construct, and maintain such devices. The following shall apply to all Owners:

(a) No transmission antenna of any kind may be erected anywhere on the Community without written approval of the Board of Directors or the Architectural Review Committee.

(b) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter shall be placed, allowed, or maintained upon the Community.

(c) DBS and MMDS satellite dishes or antennas one (1) meter or less in diameter and television broadcast service antennas may be installed only in accordance with Federal Communication Commission (FCC) rules and the Rules and Regulations of the Association, both as may be amended from time to time.

Moreover, for so long as not prohibited by any FCC rule, no satellite dish, antenna, or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or



radiation shall be located on the front or side of any Residence that is visible from the street or another Residence. In the event of a transfer of a Lot that includes the satellite dish or antenna, the grantee shall assume all responsibility for the satellite dish or antenna and shall comply with Community Documents regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

**Section 7.12. Firearms and Fireworks.** The use, display, or discharge of firearms or fireworks on any portion of the Community is prohibited except with prior written approval of the Association; provided, however, the display of lawful firearms in the Community is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes "B B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. § 25-10-1, as amended.

**Section 7.13. Garbage, Rubbish, Trash and Recyclables.** As provided in Section 4.1(a)(x), the Board shall be authorized to designate one (1) company to provide exclusive trash removal services to the entire Community on a certain designated day(s). All rubbish, trash, and garbage shall be regularly removed from a Lot and shall not be allowed to accumulate thereon. Garbage receptacles shall be screened or concealed from view of neighboring Lots and the street on which the Lot fronts except on the day of garbage pick-up in which event the garbage containers may be left at the curb for a period not to exceed sixteen (16) consecutive hours. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except in sealed bags placed in trash cans or proper receptacles designated by the Board for collection, if any. This Section is not applicable to debris, rubbish, trash, and garbage related to construction, provided that all such construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate unreasonably.

**Section 7.14. Clotheslines, Garbage Cans, Woodpiles, Recreational and Other Equipment.** All clotheslines, garbage cans, recycling containers, woodpiles, and related equipment and other similar items shall be located or screened so as to be concealed from view from any street or road. All construction debris, rubbish, trash, recyclables, and garbage shall be regularly removed and shall not be allowed to accumulate.

**Section 7.15. Fences.** Other than fences constructed as part of the initial approved construction of the improvements on a Lot by Declarant or Approved Builder, no fence, fencing type barrier of any kind including fencing enclosures for pets shall be placed, erected, allowed, or maintained upon any portion of the Community without the prior written consent of the Architectural Review Committee, with the exception that underground electronic fencing shall be allowed. No Owner shall erect or place any fence on or along a common property line, where such property line abuts Common Property, except with the prior written consent of the Architectural Review Committee or as installed by Declarant or Approved Builder. Unless otherwise provided in the Design Guidelines, the following types of fences shall be permitted on a Lot: (a) a decorative black iron or aluminum fence with a height of five feet (5') to six feet (6'); (b) a black wooden horse fence with three (3) to four (4) boards and a height of five feet (5') to six feet (6'); or (c) a cedar privacy fence with a height of five feet (5') to six feet (6'). No chain link or wire fence shall be erected on any portion of a Lot.

**Section 7.16. Air Conditioning Units.** No window air conditioning units may be installed on any Lot. Condensing units for air conditioners shall only be located in the rear or along the side of a Residence.

**Section 7.17. Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any Residence. Exterior sculptures, benches, fountains, flags, and similar items may not be placed in the front yard of a Lot or on the front exterior of a Residence without the prior written approval of the Architectural Review Committee.



**Section 7.18. Flags.** Except for flags which may be installed by Declarant, no flags may be displayed on any Lot without prior written approval in accordance with the provisions of Article 6 of this Declaration or as may be otherwise permitted in the Architectural Guidelines or this Section. No approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on the Lot in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors 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; provided, however, the Association shall not enact any Rule or Regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on a Lot in contravention of the Freedom to Display the American Flag Act of 2005.

**Section 7.19. Decks, Patios and Porches.** No laundry, garments, towels or objects other than potted plants, grills and patio furniture, shall be placed on a deck, patio or porch, except as may be authorized by the Board of Directors. Notwithstanding the foregoing, patio furniture made of plastic material shall not be placed on a front porch. In addition, objects shall not be permitted to hang over or be attached to any deck, patio or porch or to otherwise protrude outside of the vertical plane formed by the exterior surface of a deck, patio or porch. No deck, patio or porch shall be enclosed without prior approval in accordance with the provisions of Article 6 of this Declaration.

**Section 7.20. Utility Lines.** Except as may be permitted under and pursuant to Article 6 of this Declaration, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

**Section 7.21. Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on a Lot unless approved in accordance with the provisions of Article 6 of this Declaration.

**Section 7.22. Entry Features.** Owners shall not alter, remove or add improvements to any entry features or streetscapes constructed on any Lot in connection with the original development of the Community, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 6 of this Declaration.

**Section 7.23. Tree Removal.** No trees located on a Lot having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) and a height of more than ten (10) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees or for life-safety reasons; (c) trees the main trunk of which are within ten (10) feet of the Residence, driveway, or walkways constructed or to be constructed on a Lot. Owners acknowledge that there may also be laws restricting tree removal contained in Cherokee County ordinances, and in the event of any conflict between such laws and between such ordinances and this Declaration, the more restrictive provisions shall apply. Owner shall provide the Board with documentation explaining why a tree meeting requirements (a) or (b) needs to be removed (such as a letter from an arborist) prior to removing such tree. This provision shall not apply to the removal of trees by Declarant, Approved Builder, or the Association. Notwithstanding anything to the contrary stated in this Declaration, in the event a diseased or dead tree located on the Common Property that was originally planted by Declarant is removed by the Association, the Association shall replace such removed tree with one of the same species and similar size if reasonably available

**Section 7.24. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, storm drains or by installation of fencing. Declarant and Approved Builder hereby reserve a perpetual easement across all



Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 7.25. Sight Distance at Intersections.** All property located at street intersections and at the intersections of streets and driveways shall be landscaped so as to permit safe sight across the corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight distance problem.

**Section 7.26. Boundary Line Changes.** Boundaries lines between adjoining Lots may be relocated with the consent of the Owners of the affected Lots, provided any such relocation does not violate applicable subdivision and/or zoning regulations.

**Section 7.27. Subdivision of Lots.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserve the right to subdivide, combine and/or replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Subject to the prior approval of Declarant (during the Sales Period) or the Board of Directors (after the expiration of the Sales Period), an Owner may combine two (2) or more Lots into one (1) Lot. Any such combination shall not be in violation of the applicable subdivision and/or zoning regulations. The Owner of the combined Lot shall have one (1) vote, but shall be obligated to pay assessments on each of the combined Lots.

**Section 7.28. Outbuildings.** No structure of a temporary character, trailer, tent, shack, carport, storage structure, garage, barn, or other outbuilding shall be placed, erected, allowed or maintained by any Owner or Occupant on any portion of the Community, other than by Declarant (during the Sales Period), at any time, either temporarily or permanently, without the written approval of the Board. Any sheds, tool storage areas, workshops or outbuildings approved by the Board must be consistent in design materials and color with the Residence on the Lot. Each Lot shall be restricted to only one (1) outbuilding. No metal buildings will be allowed in the Community. In no event shall any trailers, campers, vehicles, shacks, tents, any garages (attached and detached), barns or other structures be used as a residential dwelling or living space in any manner whatsoever, either temporarily or permanently, within the Community, without the prior approval of the Board. However, this Section shall not be construed to prevent Declarant or Approved Builder, and their respective agents, subcontractors and assigns engaged in the development, construction, marketing, property management or sales with respect to the Community from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be constructed to prevent Declarant or Approved Builder from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

**Section 7.29. Swimming Pools.** No above-ground swimming pool shall be erected, constructed, or installed on any Lot. No in-ground swimming pool or spa shall be erected, constructed or installed on any Lot unless its design, location and placement are approved by the Architectural Review Committee.

**Section 7.30. Mailboxes.** The Community will contain a central mailbox area and/or mailbox kiosk area as determined by the Board or as installed by Declarant, and maintained by the Association.

**Section 7.31. Address Markers.** All address markers and/or address posts shall be of the same type and color as originally installed on a Lot and any modification to or change in address markers and/or address posts shall require the prior written approval of the Architectural Review Committee pursuant to Article 6 hereof.



**Section 7.32. Recreational Equipment.** No recreational or playground equipment including, but not limited to, swing sets, jungle gyms, play houses, trampolines, tennis courts, and basketball goals, shall be erected, constructed, or installed on any Lot unless its location, design, and type are approved by the Architectural Review Committee.

**Section 7.33. Window Treatments.** All window treatments visible from the exterior of the front of such Residence shall be white, off-white or another color approved in writing by the Architectural Review Committee. In no event should bed sheets, blankets, plastic, paper, foil or similar type items be used as window treatments.

**Section 7.34. Garages.** It is prohibited for an Owner or Occupant of a Lot that includes a garage to convert such garage to any other use. No Owner or Occupant of a Lot that includes a garage shall park Owner's car or other motor vehicle on any portion of the Community, other than in the garage, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible.

**Section 7.35. Garage Sales.** No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without the prior written consent of the Board of Directors. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

**Section 7.36. Lighting.** Except as may be permitted by the Architectural Review Committee, exterior lighting and decorations visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) street lights in conformity with an established street lighting program for the Community; (c) seasonal decorative lights and decorations between November 15<sup>th</sup> and January 10<sup>th</sup> of the following year.

**Section 7.37. Sidewalks.** Other than sidewalks and walkways constructed in the Community by Declarant, all sidewalks and walkways are subject to approval or disapproval under Article 6 herein.

**Section 7.38. Erosion Control and Contamination.** No activity which may create erosion or siltation problems in the Community shall be undertaken on any Lot without the prior written approval of the Architectural Review Committee or its designee, of plans and specifications for the prevention and control of such erosion or siltation. Such plans and specifications shall be designed by a professional engineer licensed in the State of Georgia and all costs and expenses related thereto shall be borne exclusively by the Owner of such Lot. The Architectural Review Committee or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, clean-up activities and requiring landscaping as provided for in this Section. No activity which results in contamination of or any damage to any stream, water course or any other Lot shall be conducted on any Lot, and each Owner shall be liable for all resulting damages from such activity and for restoration of a property damaged from contamination resulting from or attributable to such activity. In addition, prior to commencing any improvements on a Lot, the Owner of such Lot and any builders, subcontractors, or other agents of such Owner, shall fulfill their obligations to comply with the requirements of the State of Georgia Department of Natural Resources, Environmental Protection Division or any other governmental agency having jurisdiction thereof.

**Section 7.39. Lake/Stream Buffers.** Land disturbance activities shall not be conducted closer to the banks of any lake or stream within the Community than is permitted by federal, state or local law or ordinances, as measured from the point where vegetation has been wrested by normal stream flow or as measured otherwise as may be required pursuant to applicable law or ordinance, except with prior written



approval under Article 6 of this Declaration and compliance with Georgia law and all other applicable laws or ordinances, including, without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, *et seq.*, as amended from time to time. The stream buffer areas existing at the time of the recording of the subdivision plat(s) for the Community are generally shown thereon.

**Section 7.40. Buffer and Improvement Setbacks.** The Community may contain impervious setbacks, impervious stream setbacks, undisturbed buffers, zoning buffers, and/or undisturbed buffer areas, or similarly named areas, as may be shown on the recorded subdivision plat(s) for the Community or identified as zoning conditions affecting the Community. Any buffer areas shall exist as undisturbed natural buffer areas of existing vegetation. Without the approval of the ARC, an Owner shall not disturb any undisturbed buffer areas in any way, including, without limitation, the construction of any improvements in the undisturbed buffer, landscaping, or cutting of trees, bushes or other vegetation. In addition, no improvements may be erected within any impervious setback area without the approval of the ARC. Furthermore, an Owner shall not maintain or trim the vegetation in any undisturbed buffer or impervious setback areas. The Association is allowed to maintain and trim the vegetation in any undisturbed buffer or impervious setback areas at the direction of the Board, but only in accordance with all applicable zoning and code requirements.

**Section 7.41. Lot Coverage and Improvement Setbacks.** The Community contains building setback lines (including, but not limited to, zoning setbacks) and is subject to a maximum lot coverage restriction as shown on the recorded subdivision plat(s) for the Community. Except as may be allowed under all applicable zoning and code requirements, Owners shall not construct any improvements encroaching on the building setback lines or in excess of the maximum lot coverage.

**Section 7.42. Lakes, Ponds, Wetlands, Creeks and Streams.** Except as herein provided, all storm water retention or detention ponds, ponds, lakes, wetlands, creeks and streams 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 written consent of the Board of Directors. The Association, Declarant and/or Approved Builder shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of storm water retention or detention ponds, ponds, lakes, wetlands, creeks, streams or other areas of water 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 storm water retention or detention ponds, ponds, lakes, wetlands, creeks or streams within the Community, or any other Common Property. Applicable governmental agencies, Declarant, and the Association, shall have the sole right to control the water level of all other 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 or detention ponds, ponds, lakes, wetlands, creeks and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any storm water retention or detention pond, ponds, lakes, wetlands, creek or stream within the Community and shall not be permitted to withdraw water from any storm water retention or detention pond, ponds, lakes, wetlands, creek or stream as may exist in the Community without the prior written consent of the Board of Directors.

**Section 7.43. Use of Common Property.** There shall be no obstruction of the Common Property, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Property without the prior written consent of the Board, except as specifically provided in this Declaration. Unless permitted by the Board of Directors, there shall be no gardening or landscaping on the Common Property (except for those portions of the Common Property that are specifically designated by the Board as a "Community garden") by Owners or Occupants without the prior written consent of the Board. This Section shall not apply to Declarant during the Sales Period.



## ARTICLE 8. COVENANTS TO ENCOURAGE SUSTAINABLE LIVING

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**Section 8.1. Solar Panels.** Notwithstanding any provision to the contrary contained in this Declaration, Owners shall be permitted to install solar panels on portions of the roof of the Residence on the Lot sloping towards the rear of the Lot, provided that solar panels are not visible from the front of the Lot.

**Section 8.2. Compost Piles.** Notwithstanding any provision to the contrary contained in this Declaration, Owners shall be permitted to keep a compost pile in the rear of the Owner's Lot without approval of the Architectural Review Committee provided that:

- (a) the compost is fully enclosed in an impervious container that is not accessible to animals or rodents; and
- (b) the compost pile is not any closer than fifteen (15) feet to a rear property line of a Lot (no compost piles may be located within the sidelines of the Residence on the Lot).

**Section 8.3. Vegetable Gardens.** Notwithstanding any provisions to the contrary contained in this Declaration, Owners shall be permitted to have vegetable garden(s) in the rear of the Owner's Lot with prior approval of the Architectural Review Committee, provided that:

- (a) only vegetables, fruit or herbs are grown in the vegetable garden;
- (b) all dead plants or portions thereof are immediately removed from the vegetable garden(s);
- (c) the area of the vegetable garden(s) is covered with pine straw or mulch at any time the garden is dormant;
- (d) the total square footage of the vegetable garden(s) does not exceed two hundred (200) square feet;
- (e) the entire rear yard of Owner's Lot is entirely enclosed with a privacy fence, as provided in Section 7.15 of this Declaration; and
- (f) placement of the vegetable garden(s) is within only the rear yard of Owner's Lot.

The Board may also establish community vegetable garden(s) on the Common Property and develop separate Rules and Regulations relating to the use and maintenance of any such community vegetable garden(s).

**Section 8.4. Rain Barrels.** Notwithstanding any provision to the contrary contained in this Declaration, Owners shall be permitted to connect downspouts to plastic rain barrels without prior approval of the Architectural Review Committee provided that:

- (a) the water collected in the rain barrel is used for watering plants, irrigation, or other outdoor household purposes;
- (b) the water is not permitted to stagnate where it has an odor;
- (c) the rain barrel is enclosed so that it is not accessible to or a breeding ground for animals, rodents or insects; and
- (d) the rain barrel is beige or brown in color or of a natural wood appearance.





**Section 8.5. Other Energy Devices.** Notwithstanding any provision to the contrary contained in this Declaration and except for devices installed by Declarant, Owners shall be permitted to install artificial or man-made devices which are designed or used for collection of energy by wind or geothermal energy or other similar purposes, provided that such devices are:

- (a) Installed on the rear of the Lot;
- (b) Not visible from the front of the Lot;
- (c) Not in violation of any governmental or regulatory regulation; and
- (d) Approved by the Architectural Review Committee prior to installation.

## **ARTICLE 9. AGE RESTRICTION**

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**Section 9.1. Age Restriction.** The Residences within the Community are intended for the housing of persons fifty-five (55) years of age or older, although younger persons are not restricted from occupying a Residence along with a person fifty-five (55) years of age or older so long as such co-occupancy is in compliance with this Article 9. The provisions of this Article are intended to be consistent with, and are set forth in order for the Community to comply with the Fair Housing Act, 43 U.S.C. § 3601, *et seq.*, and O.C.G.A. § 8-3-205, *et seq.*, as such laws may be amended from time to time, and any regulations adopted pursuant to such laws (collectively, the “Fair Housing Acts”), regarding discrimination based on familial status. During the Sales Period, Declarant shall have the power to amend unilaterally this Article 9 for the purpose of making this Article 9 consistent with the Fair Housing Acts and any judicial decisions arising under or relating to the Fair Housing Acts in order to maintain the intent and enforceability of this Article 9.

**Section 9.2. Qualifying Occupant.** Except as otherwise permitted in this Article 9, at least one (1) permanent Occupant of each occupied Residence must be fifty-five (55) years of age or older; provided, however, if an Occupant who is fifty-five (55) years of age or older deceases, the remaining Occupants of the Residence may continue to occupy the Residence even though none of such persons are fifty-five (55) years of age or older. For purposes of this Article, an Occupant shall not be considered a “permanent Occupant” unless such Occupant considers the Residence to be Occupant’s legal residence and actually resides on the Residence for at least six (6) months during each calendar year or such shorter period as the Residence is actually occupied by any person.

**Section 9.3. Minor Children Not Allowed.** No Residence shall be occupied by any person under eighteen (18) years of age. For purposes of this Article 9, a person shall be deemed to occupy a Residence any day during which he or she stays overnight in the Residence, or is present in the Residence for more than six (6) hours, more than twenty-one (21) days in any sixty (60) day period or for more than thirty (30) days in any twelve (12) month period.

**Section 9.4. Age Verification Procedures.** The provisions of this Article 9 are for the purpose of establishing the policies and procedures necessary for the property to qualify as housing for older persons under the Fair Housing Acts, and the regulations promulgated thereunder. The Board of Directors is authorized to adopt from time to time such other policies and procedures which may, in the Board’s sole discretion, be necessary in order for the property to meet all of the requirements for such exemption.

(a) In order for the property to qualify as housing for older persons under the Fair Housing Acts, at least eighty percent (80%) of the Residences must be occupied at all times by one (1) person fifty-five (55) years of age or older. In order for the Association to determine whether that requirement is being met at all times, each Owner shall, within ten (10) days after being requested to do so by the Board



of Directors, furnish to the Association a statement signed by the Owner certifying that at least one (1) Occupant of the Owner's Residence is fifty-five (55) years of age or older. In addition, if requested to do so by the Board of Directors, an Owner shall promptly furnish to the Association such reasonable documentary evidence as may be requested by the Association to verify the accuracy of the statement set forth in any certification submitted to the Association by the Owner.

(b) In the event of any change in the number or identity of persons occupying a Residence as a result of a transfer, sale, gift, lease, sublease, assignment, death, birth, marriage, separation, divorce or otherwise, the Owner of the Residence shall immediately notify the Board of Directors or its designee in writing and provide the Board of Directors or its designee with the names and ages of all Occupants of the Residence and such other information or documentation as the Board of Directors or its designee may reasonably request.

**Section 9.5. Exceptions Permitted.** An Owner, Occupant, or prospective Owner or Occupant, may request in writing that the Board of Directors make an exception to the requirements of this Article 9 with respect to a Residence and, provided that the granting of such an exception would not jeopardize compliance of the Community with the requirements for housing for older persons under the Fair Housing Acts, and the regulations promulgated thereunder, the Board of Directors may, but is not required to, grant such an exception, if:

(a) such Owner, Occupant, or prospective Owner or Occupant, will be fifty-five (55) years of age within five (5) years of the date of the request for said exception;

(b) such ownership or occupancy is necessary to provide a reasonable accommodation to a disabled or handicapped Owner, Occupant, or prospective Owner or Occupant of a Residence; or

(c) refusal would result in undue hardship to the Owner, Occupant, or prospective Owner or Occupant, as determined in the sole and exclusive discretion of the Board. Such "undue hardship" as described herein shall include, but not be limited to, the ability of an Owner, Occupant, or prospective Owner or Occupant to care for himself or herself.

**Section 9.6. Residences Excluded From Compliance.** In order for the Community to qualify as housing for older persons under the Fair Housing Acts, at least eighty percent (80%) of the Residences must be occupied at all times by one (1) person fifty-five (55) years of age or older. In accordance with the Fair Housing Acts and regulations promulgated thereunder, for purposes of this calculation, Residences occupied solely by either: a person or persons (and their families residing in the same Residence), who perform(s) substantial duties directly related to management or maintenance of the common areas and whose occupancy, if not meeting the age requirements, is approved by the Board of Directors; or an attendant, health care provider or family care provider (and their families residing in the same Residence) needed for the reasonable accommodation of the disability of a Qualified Occupant and whose occupancy, if not meeting the age requirements, is approved by the Board of Directors shall not be considered in any manner to determine compliance with the Fair Housing Acts.

**Section 9.7. Compliance Required for Lease, Sale or Transfer of Lot.** Nothing in this Article 9 is intended to restrict the ownership or transfer of title to any Lot; however, no Person may occupy a Residence unless the requirements of this Article 9 are met, and no Owner shall permit occupancy of Owner's Residence in violation of this Article 9. Owners shall: (a) clearly disclose to any prospective tenant, purchaser, or other potential Occupant that Residences within the Community are intended to qualify as housing for older persons under the Fair Housing Acts; and (b) include in conspicuous type, in any lease or other occupancy agreement, or contract of sale relating to such Owner's Residence, which agreements or contracts shall be in writing and signed by the tenant or purchaser, a statement that Residences within the Community are intended to qualify as housing for older persons under the Fair Housing Acts; and, in the



case of a lease or other occupancy agreement, that failure to comply with the requirements and restrictions of this Article 9 shall constitute a default under the lease.

## **ARTICLE 10. MAINTENANCE**

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**Section 10.1. Association's Responsibility.** The Association shall maintain and keep in good repair the Area of Common Responsibility. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping, fencing, paving and other improvements located on the Common Property. Specifically, but not by way of limitation, the Association shall maintain: (a) all storm water retention detention or ponds, dams, spillways and structures located in the Community, if and to the extent such ponds and storm water drainage systems are not maintained by a public entity, governmental entity, or owners of neighboring property; (b) all entrance features in the Community whether located on a Lot or on the Common Property; (c) sidewalks whether located on a Lot or on the Common Property unless maintained by a public entity; (d) any streets, roads, and alleys located within the Community which are not maintained on an ongoing basis by a governmental or public entity; (e) the Gate System; (f) any retaining walls in the Community which serve more than one Lot, (g) all Community greenspace and Common Property, (h) any recreational amenities serving the Community, including swimming pool, clubhouse, and walking trails within the Community, if any, (i) all street lighting in the Community to the extent not maintained by a governmental entity, (j) any central mailbox areas and mailbox kiosks within the Community, (k) any irrigation systems within the Common Property, and (l) any Community fencing (as determined by the Board) which is located on Lots. The Association shall also maintain all property outside of Lots located within the Community which was originally maintained by Declarant or its affiliates.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether located within or outside the Community, where the Board has determined that such maintenance would benefit the Association. Moreover, the Association shall also have the exclusive right and obligation to maintain the front, side and rear lawns of all Lots following the initial installation of sod or other final grassing or landscaping of such Lot and residency by the Owner of such Lot ("Association Lawn Maintenance"). Such Association Lawn Maintenance shall include only that scope of work as determined by the Board and shall be performed according to a schedule determined by the Board.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner or Occupant, Owner's family, guests, tenants, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair, or replacement at the expense of the Owner or Occupant, and all costs shall be added to and become a part of the assessment obligation of the Owner or Occupant and shall become a lien against the Lot of that Owner or Occupant.

**Section 10.2. Owner's Responsibility.** Except as provided in Section 10.1 above and unless such maintenance responsibility is otherwise assumed or assigned to the Association pursuant to this Declaration, or any Supplementary Declaration, all maintenance of a Lot and the Residence, landscaping, and other improvements located thereon shall be the sole responsibility of the Owner of such Lot, which Owner shall maintain such areas in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: (a) prompt removal of all litter, trash, refuse, and waste; (b) all lawn maintenance that is not included in the Association Lawn Maintenance as provided in Section 10.1 above; (c) the pruning and trimming of all trees, hedges and shrubbery on a Lot so that the same are not obstructive of a view by motorists or pedestrians of street traffic; (d) watering landscaped areas on a Lot; (e) keeping lawn and garden areas healthy, alive, attractive, and free of weeds and dead plant material; (f) keeping improvements and exterior lighting in good repair and working order; (g) keeping driveways and walkways in good repair; (h) complying with all governmental health and police requirements; (i) maintaining grading and storm water drainage as originally established



on the Lot; (j) repairing exterior damage to improvements; (k) all maintenance, repair and replacement to the Residence located on the Lot, including, without limitation, periodic painting and pressure washing as needed; (l) maintaining, repairing and replacing all storm water drainage facilities, including, all pipes, wires and conduits related thereto, located on and exclusively serving the Lot; and (m) maintaining, repairing and replacing all pipes, wires and conduits, including, without limitation, plumbing, electric and sanitary sewer systems, which exclusively serve the Lot. No landscaping shall be installed except in accordance with this Declaration and until a landscape plan complying with the Design Guidelines has been submitted to and approved by the Architectural Review Committee. In the event that the Board of Directors determines that such areas are not maintained in a manner consistent with the Community-Wide Standard and this Declaration, except in an emergency situation, the Board of Directors shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall state the maintenance, repairs, or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of the notice to complete the maintenance, repair, or replacement. In the event that the maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, the Owner shall begin the work and shall complete it within a reasonable time. If the Board determines that (i) an emergency exists, or (ii) that an Owner has not complied, the Association may provide the maintenance, repair, or replacement at that Owner's sole cost and expense, and all costs including reasonable attorneys' fees shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

**Section 10.3. Maintenance Standards and Interpretation.** The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article 10. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations by the Board.

**Section 10.4. Gate System.** It is anticipated that Declarant will install a Gate System in the Community. Each Owner, by accepting a deed to a Lot, shall be deemed to acknowledge and agree to the following:

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

(b) Declarant, Approved Builder, the Association and their respective officers, directors, members, representatives or agents shall not be responsible for the security of Owners, Occupants or their family members, guests, invitees or property. FURTHERMORE, DECLARANT, APPROVED BUILDER, THE ASSOCIATION AND ANY OWNER OR OCCUPANT DO NOT PROVIDE ANY GUARANTEE OR ASSURANCE TO ANY OTHER OWNER, OCCUPANT OR THIRD-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. EACH OWNER, BY THE ACCEPTANCE OF A DEED TO A LOT, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT, 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, life-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 Lot. Each Owner is encouraged to install personal security devices upon and within such Owner's Lot to the same extent that would be prudent if the Gate System did not exist.

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

(F) DECLARANT AND APPROVED BUILDER 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. FURTHERMORE, 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 shall be owned, operated, and maintained by the Association at its sole cost and expense and the costs associated therewith shall be included in the annual assessment as provided in Section 5.3 hereof. Declarant and Approved Builder shall not 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.

## **ARTICLE 11. INSURANCE AND CASUALTY LOSSES**

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**Section 11.1. Association Insurance.** The Association, acting through its Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Property and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty. If blanket "all-risk" coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril.

The Board also shall obtain a commercial general liability policy covering occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the Area of Common Responsibility. If generally available at reasonable cost, the commercial general liability policy shall have at least a One Million Dollar (\$1,000,000) combined single limit as respects bodily injury and property damage and at least a Two Million Dollar (\$2,000,000) limit per occurrence and in the aggregate. The liability insurance obtained by the Association pursuant to this Declaration shall cover the Association and the officers, agents and employees of the Association, the Owners, and their respective Mortgagees. The Association shall be designated as the named insured, individually and as agent for the Owners collectively, without naming them individually, and as agent for their respective Mortgagees.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the



loss is the result of the negligence or willful conduct of one or more Owners or Occupants, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 5.5 hereof.

All insurance coverage obtained by the Board of Directors shall be governed by the following provisions:

(a) All policies shall be written with a company authorized to do business in the State of Georgia.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees.

(d) All property insurance policies shall have an inflation guard endorsement, if reasonably available.

(e) If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement.

(f) The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Cherokee County, Georgia area.

(g) The Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

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

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

(iii) a statement that no policy may be cancelled, invalidated, suspended, or subjected to nonrenewal on account of any one or more individual Owners;

(iv) a statement that no policy may be cancelled, invalidated, suspended, or subjected to nonrenewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which it may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) a statement that any "other insurance" clause in any policy excludes individual Owners' policies from consideration; and

(vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.



In addition to other insurance required by this Section, the Association shall obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

In addition to the other insurance required by this Section, the Board may obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined by the Board using its best business judgment.

**Section 11.2. Repair and Reconstruction.** In the event of damage to or destruction of all or any part of the improvements on the property maintained by the Association as a result of any event covered by the Association's insurance, unless seventy-five percent (75%) of the Total Association Vote decide within sixty (60) days after the loss not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

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 said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Property shall be repaired or reconstructed.

If it is determined in the manner described above that the damage or destruction to the Common Property shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the properties shall be cleared of all debris and ruins. Thereafter, the properties shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community Standard.

(a) Cost Estimates. After a casualty causing damage to property maintained by the Association, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures, if any, to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) Source and Allocation of Proceeds. If insurance proceeds are not sufficient to defray the estimated costs of reconstruction and repair of the property maintained by the Association, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment in an amount necessary to cover the insufficiency may be made against all of the members. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be retained by the Association.

(c) Plans and Specifications. Any reconstruction or repair of the property maintained by the Association shall be substantially in accordance with the plans and specifications under which the Community was originally constructed, except where changes are necessary to comply with current applicable codes.

(d) Damage and Destruction to Improvements on Lots. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner within seventy five (75) days after the damage or within the required period and shall be diligently and continuously pursued until their completion. Alternatively, the Owner may demolish and remove all damaged improvements on the Lot within seventy five (75) days after such damage or destruction and maintain the property in a neat and clean condition consistent with the Community Standard.



## ARTICLE 12. CONDEMNATION

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In lieu of or under threat of condemnation by a governmental or other entity with the lawful power to condemn property, the Board of Directors shall have the power to convey portions of the Common Property to such governmental or other entity which has a lawful power to condemn real property in lieu of or under threat of condemnation. The award made for such taking shall be used by the Association as follows:

(a) If the taking involves a portion of the Common Property on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining land included in the Area of Common Responsibility to the extent lands are available, unless within sixty (60) days after such taking Declarant (during the Sales Period) and Owners representing at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions in Article 11 hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

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

## ARTICLE 13. MORTGAGEE PROVISIONS

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The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article 13 apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**Section 13.1. Notices of Action.** An Eligible Mortgage Holder, who provides a written request to the Association (such request to state the name and address of such Eligible Mortgage Holder and the Lot number) will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgagee Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action, which would require the consent of a specified percentage of Mortgagees.

**Section 13.2. No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Association easement areas.





**Section 13.3. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 13.4. Amendments by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements, which necessitate the provisions of this Article 13 or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article 13 to be recorded to reflect such changes.

**Section 13.5. Liability for Common Expenses.** Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title.

**Section 13.6. Applicability of This Article.** Nothing contained in this Article 13 shall be construed to reduce the percentage vote that must otherwise be obtained under the Community Instruments, or Georgia law for any of the acts set out in this Article 13.

**Section 13.7. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## **ARTICLE 14. EASEMENTS**

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**Section 14.1. Easements for Utilities.** There is reserved to Declarant, Approved Builder, and the Association blanket easements upon, across, above, and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables, and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, Declarant or Board, as applicable, shall have the right to grant such easement.

**Section 14.2. Easement for Entry.** In addition to the right of the Board to exercise self-help as provided herein, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and life-safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right to enter to cure any condition that may increase the possibility of a fire, slope erosion, or other hazard if an Owner or Occupant does not cure the condition after request by the Board and in such event, the Owner shall be obligated to reimburse the Association for the cost of curing such condition and the Association may charge such cost to the Lot, as a specific assessment in accordance with Section 5.5 herein. For purposes of this Section, a water or other utility leak, fire, strong foul odor, obvious insect infestation, or sounds indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry onto any Lot. The



failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a property shall exist.

**Section 14.3. Easement for Maintenance.** Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, including any and all Lots, determined in the sole discretion of the Association, as are necessary to allow for the maintenance and/or repairs required pursuant to this Declaration. This maintenance shall be performed with a minimum of interference to the quiet enjoyment of a Lot.

**Section 14.4. Construction and Sales Period Easement.** Notwithstanding any provision contained in the Community Instruments, during the Sales Period, there is hereby reserved to Declarant and Approved Builder an easement across the Community to maintain and carry on, upon such portion of the Community as Declarant or Approved Builder may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant or Approved Builder may be required, convenient, or incidental to the development, construction, sales and marketing activities by Declarant or Approved Builder, as the case may be, with respect to the Community, including, but without limitation, the following: (a) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; (b) the right to tie into any portion of the Community with driveways, parking areas and walkways; (c) the right to tie into and/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, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (d) the right to grant easements over, under, in or on the Community, including, without limitation, the Lots, for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; (e) the right to carry on sales, marketing and promotional activities in the Community; (f) the right to erect and maintain signs; (g) the right to construct and operate business offices, construction trailers, model residences, and sales offices; (h) the right to use the parking facilities within the Community; (i) the right to keep open the Gate System in connection with the sales and marketing activities by Declarant or Approved Builder. In addition, Declarant or Approved Builder may use Residences, offices, or other buildings owned or leased by Declarant or Approved Builder, as the case may be, as model homes 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, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the express written consent of Declarant and Approved Builder until the expiration of the Sales Period.

**Section 14.5. Public in General.** The easements and rights created in this Article 14 do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Official Records or which may exist in favor of property owners adjoining the Community. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days' prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community which, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

**Section 14.6. Easement for Entry Features and Street Signs.** There is hereby reserved to Declarant, and granted to the Association, and the designees of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right



to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

**Section 14.7. Trash Receptacle Easement.** Declarant hereby declares, creates, imposes and establishes a non-exclusive joint and reciprocal easement in perpetuity over and across an area five (5) feet wide running along and contiguous to the boundary line of any private streets, alleys or drives in the Community as shown on the Survey for the placement of trash receptacles for pickup.

**Section 14.8. Easements for Drainage.** There is hereby reserved to Declarant, Approved Builder and the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the Survey for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Community or any portion thereof (but without obligation on the part of Declarant or Approved Builder). Areas of storm drainage piping and retention or detention ponds within the Community may be maintained by governmental entities and such governmental entities may have easements over, across and under such areas. This easement shall include the right (but not obligation on the part of Declarant or Approved Builder) to construct and maintain catch basins, retention or detention ponds, drainage swales, storm sewers, storm drains, dams, spillways and appurtenant structures, sloping banks, cut or fill, except as otherwise handled by governmental entities. In addition, there is hereby reserved to Declarant and Approved Builder and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Community (but without obligation on the part of Declarant); provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the Residence structure. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surface in the Community. Declarant, Approved Builder, the Association and any Owner constructing according to plans and specifications approved or deemed approved under Article 6 hereof shall not have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from such construction.

**Section 14.9. Easement Over Streets, Roads, Alleys; Signs.** Declarant hereby grants, conveys, declares, creates, imposes, and establishes, a perpetual, nonexclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across any private streets, roads and alleys located within the Community that are not otherwise maintained by a governmental entity, as depicted on the recorded subdivision plats for the Community and which serve more than one (1) Lot. The right-of-way easement herein granted shall permit joint usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any such 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 nonexclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for itself and grants to the Approved Builder and the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across the private drives for the installation, maintenance, and use of such drives, sidewalks, traffic directional signs, grading for proper drainage, and related activities and improvements. In addition, all Lots shall be subject to a perpetual easement in favor of the Association and all other Owners for maintenance, management, repair, landscaping, and non-exclusive ingress, egress, use and enjoyment, of any private alleys which are located in the Community, as shown on the recorded plats for the Community, whether said alleys are located on Common Property or are located on Lots. This easement right includes rights of contractors and repair persons, including, but not limited to, their employees, personnel, agents and representatives, as well as Association agents and representatives, engaged by the Association to enter upon any and all Lots from time to time as necessary in order to perform any of the above repair or maintenance work. Owners of the Lots shall not impair access to, or otherwise alter in any way, said alleys or landscaping.



## ARTICLE 15. ANNEXATION AND WITHDRAWAL OF PROPERTY

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**Section 15.1. Annexation by the Association.** Upon the written consent of (a) the owner(s) thereof, (b) Declarant, and (c) the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Official Records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Association's secretary. The annexation shall be effective only upon the filing for record of such Supplementary Declaration in the Official Records, unless a later Effective Date is provided therein.

**Section 15.2. Withdrawal of Property.** During the Sales Period, Declarant reserves the right to amend this Declaration to withdraw any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent that such real property was included originally in error or as a result of any changes in Declarant's development plans for the Community, provided that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

**Section 15.3. Additional Covenants and Easements.** Declarant may unilaterally subject any portion of the Community submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than Declarant.

## ARTICLE 16. GENERAL PROVISIONS

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**Section 16.1. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless at least sixty-six and two-thirds percent (66 2/3%) of the record Owners execute an agreement to prevent renewal of the covenants and such agreement is recorded and an attorney's affidavit confirming ownership of the Lots or such other requirement as provided in O.C.G.A. §44-5-60. A written instrument reflecting termination must be recorded within two (2) years prior to the expiration of the initial twenty (20) year period or any subsequent twenty (20) year period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section.

**Section 16.2. 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 Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the expiration of the Sales Period; (b) the date on which a certificate of occupancy has been issued for all Residences in the Community; or (c) the date of recording by Declarant in the Official Records of a written instrument terminating all of Declarant's rights hereunder.

**Section 16.3. Amendment.**



(a) This Declaration or the Bylaws may be amended unilaterally at any time and from time to time by Declarant: (i) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (ii) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the property subject to this Declaration; (iii) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the property subject to this Declaration; or (iv) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the property subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless the Owner consents to the amendment in writing. Furthermore, during the Sales Period, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, such amendment shall neither materially and adversely affect the substantive rights of any Owner, nor adversely affect title to any Lot without the consent of the affected Owner.

(b) In addition to the above, this Declaration or the Bylaws may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the Total Association Vote. Amendments to this Declaration or the Bylaws shall become effective upon recordation, unless a later Effective Date is specified in the amendment. During the Sales Period, no provision of this Declaration or the Bylaws which reserves, grants, or exempts special rights, easements, or exemptions to Declarant or Approved Builder shall be amended or removed without the prior written consent of Declarant or Approved Builder, as applicable.

(c) Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's Effective Date. No action to challenge any such amendment may be brought after such time.

(d) In addition to the above, within sixty (60) days after the end of the Declarant Control Period, the Board is authorized, without a vote of the Owners, to amend this Declaration to submit the Community to the Property Owners Association Act of Georgia, O.C.G.A. §44-3-220, et seq.

**Section 16.4. SECURITY. THE ASSOCIATION OR DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE LIFE-SAFETY IN THE COMMUNITY. HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY FOR THE COMMUNITY. FURTHERMORE, NEITHER DECLARANT NOR THE ASSOCIATION REPRESENTS THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE COMMUNITY AND COMMIT CRIMINAL ACTS NOR DOES DECLARANT OR THE ASSOCIATION REPRESENT THAT CRIMINAL ACTS WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. DECLARANT APPROVED BUILDER, AND THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.**

**Section 16.5. Dispute Resolution.** Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director or officer or any agent of the Association. The Owner or Occupant shall in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall



give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time, and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

**Section 16.6. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 16.7. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

**Section 16.8. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**Section 16.9. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 16.10. 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 Bylaws shall be in writing, and shall be addressed to an Owner (at the address of the Lot), to Declarant (at the address of its registered agent on file with the Secretary of State of Georgia), and to the Association (at the address of its registered agent on file with the Secretary of 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 prepaid, 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.

**Section 16.11. Notice of Sale or Acquisition.** Owners must keep the Association apprised of their name, address and telephone number. Accordingly, prior to the sale of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser and such other information as the Board may reasonable require. Upon acquisition of a Lot, each new Owner shall provide the Association with written notice of the name, mailing address and telephone number of the Owner, the names of the Occupants of the Lot, if any, and such other information as the Board may reasonably require. All Owners shall notify the Association of any change in name, address, or telephone number.

**Section 16.12. Indemnification.** To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorneys' fees, imposed



upon or reasonably incurred by any officer, director or committee member 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 such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. 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, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 16.13. Transfer of Declarant's Rights.** Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Official Records.

**Section 16.14. Sale of Lots.** An Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish to the Board as part of the notice (a) the name and address of the intended grantee; and (b) such other information as the Board may reasonably require. This Section shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot, as the new Owner, shall give written notice to the Board of Directors of Owner's ownership of the Lot. Upon failure of an Owner to give the required notice within the seven (7) day time period provided herein, the Board may levy fines against the Lot and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining Owner's identity.

**Section 16.15. Agreements.** Subject to the prior approval of Declarant (during the Sales Period), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 16.16. No Discrimination.** No action shall be taken by Declarant, Approved Builder, the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

**Section 16.17. Cumulative Effect; Conflict.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any declaration affiliated with the Community and the corresponding association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and the provisions of any articles of incorporation, bylaws, Rules and Regulations, policies, or practices adopted or carried out pursuant thereto, those of any declaration or association affiliated with the Community shall be subject and subordinate to those of this Declaration and the Association. In the event of a conflict between the provisions of this Declaration and the provisions of Georgia law, then to the extent that the provisions of Georgia law cannot be waived by agreement, Georgia law shall control.



**Section 16.18. Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Community Instruments, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

**Section 16.19. Variances.** Notwithstanding anything to the contrary contained in this Declaration, Declarant (for so long as it owns any portion of the Community) and the Board of Directors or its designee shall be authorized, but not required, in its sole discretion to grant individual variances from any of the provisions of the Community Instruments, if it determines that waiver of application or enforcement of the provision in a particular case would not materially harm other Owners or negatively affect other Owners' quality of life in the Community.

**Section 16.20. Successor Declarants.** Any successor to Declarant shall not be responsible or subject to liability by operation of law or through the purchase of Declarant's interest in the Community or any portion thereof at foreclosure or otherwise for any act, omission, or matter occurring or arising from any act, omission, or matter occurring prior to the time the successor succeeded to the interest of Declarant.

**Section 16.21. Constructive Notice and Acceptance.** Every Person who or which shall hereafter have, claim, own or acquire any right, title, interest or estate in or to any portion of the Community, whether or not such interest is reflected in the Official Records, shall be conclusively deemed to have (a) consented and agreed to each and every term, provisions, covenant, condition, restriction, easement and reservation contained or by reference incorporated in this Declaration, whether or not any reference to this Declaration is contained in the document or instrument pursuant to which such Person shall have acquired such right, title, interest or estate on the Community or any portion hereof; and (b) acknowledged and agreed that in addition to being subject to and bound by the Community Instruments, the Community is subject to and bound by other documents and instruments recorded in the Official Records.

**Section 16.22. Disclosures.** Each Owner and Occupant acknowledges the following:

(a) Community Conditions. Since in every community, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions within and outside of the Community that an Owner or Occupant may find objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with community conditions that could affect the Lot.

(b) Adjacent Properties. Neither Declarant nor Approved Builder make any representations or warranties regarding the future development or use of properties adjacent to or in the vicinity of the Community (collectively "Adjacent Properties"), which may not necessarily be restricted exclusively to residential use, but shall be subject only to uses allowed by applicable zoning ordinances, including without limitation, office, retail or other commercial uses. Any floor plans, renderings, models, drawings, and the like, which purport to depict such Adjacent Properties, or any portion thereof, are merely projections, which are subject to change and do not reflect an actual commitment to develop the Adjacent Properties in any particular manner. No Owner and Occupant shall rely on any projected plans for the future development of the Adjacent Properties as an inducement to acquire or occupy a Lot.

(c) Off-Site Conditions. Declarant shall not be responsible for responding to or taking any affirmative action on behalf of the Association or an individual member of the Association to mitigate, alleviate, remedy or cure any off-site conditions that may directly impact the Community or any portion thereof, and such inaction by Declarant shall not constitute a breach of fiduciary duty by the directors and officers of the Association that are appointed by Declarant, pursuant to Section 3.2 of the Bylaws.

(d) Crime. Crime exists in every neighborhood and Declarant, Approved Builder, and the Association and their respective affiliates make no representations regarding crime or security. Declarant, Approved Builder and the Association are not providers of security and that if an Owner is concerned about crime or security, Owner should consult a security expert. Owners should be alert to and guard





against the potential for crime. Crime statistics are maintained by the police in the jurisdiction in which the Community is located. It shall be Owner's sole responsibility to keep abreast of trends in criminal activity and to act accordingly.

(e) Easements. The Community is subject to all conditions, restrictions and easements of record and those set forth on the Survey, including, but not limited to all drainage and sanitary sewer easements shown thereon.

(f) Right-of-Ways. The Community is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

(g) Light and Views. The natural light available to and views from an Owner's Lot may change over time due to, among other circumstances, additional development and the growth or removal or addition of landscaping within the Community and in the surrounding neighborhood. Light may emit from structures located on Adjacent Properties.

(h) Zoning. No representations are made regarding the zoning of Adjacent Properties, or that the category to which Adjacent Properties is zoned may not change in the future.

(i) Schools. No representations are made regarding the schools that currently or may in the future serve the Lot.

(j) Construction Activities. Declarant and Approved Builder may be constructing portions of the Community and engaging in other construction activities related to the construction of Common Property and additional phases of the Community. Such construction activities may, from time to time, produce certain conditions on the Community, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the life-safety of Persons on the Community. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Community resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause Declarant, Approved Builder, and their respective agents to be deemed in violation of any provision of this Declaration.

(k) Construction Changes. Building code requirements may change during the construction of the Community and may not necessarily be incorporated into the design or construction of the Community. During construction, there may be changes and alterations made to the original stamped and approved design drawings and the construction of the Community as a matter of necessity to achieve cost savings and due to field changes ordered by the architect, engineer, seller and various building inspectors.

(l) Community Scope. During the course of the construction of a Residence on a Lot or construction on any Common Property, variations from the original plans and specifications, some of which add scope, some of which reduce scope, and some of which alter scope, are inevitable and can, do, and may occur as a matter of intention and/or as a matter of necessity. Therefore, some code requirements may change during the interim period which may not be incorporated into the design of the Community.

(m) Construction Materials. Various substances used in the construction of the improvements in the Community may now or in the future be determined to be toxic, hazardous or undesirable and may need to be specifically treated, handled and/or removed from the Community. The construction materials used may contain some of the following chemicals and minerals in measurable amounts: water (which may allow the growth of mold, mildew and fungus); formaldehyde (used in the manufacture of carpeting, insulation and pressed wood products); arsenic (used in treating wood products); methylene chloride



(used in paint thinners); fiberglass; and petroleum products. Declarant and Approved Builder have no expertise with respect to toxic wastes, hazardous substances, pet dander, dust mites, or other undesirable substances. Such substances can be extremely costly to correct and remove and Declarant and Approved Builder shall have no liability to the Association, any Owner or any Occupant regarding the presence of such substances in the Community. All buildings contain products that have water, powders, solids and industrial chemicals, which will be used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. Neither Declarant nor Approved Builder is responsible for any illness or allergic reactions that an Owner or Occupant may experience as a result of mold, mildew, fungus or spores. It is the responsibility of each Owner to keep Owner's Residence clean, dry, well ventilated and free of contamination.

(n) Humidity and Condensation. A Residence may trap humidity created by everyday living (cooking, bathing, laundering, etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by the Owners and Occupants, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially mildew and/or mold.

(o) Heating and Cooling Systems. The performance and methods and practices of operating heating and cooling systems can be directly affected by the orientation and location of a room in relation to the sun. Approved Builder shall, therefore, have no obligation other than to install a heating and cooling system for a Residence that has been sized and designed based on industry standards for the type and size of the Residence to be constructed and which functions in accordance with industry standards. Moreover, no representations are made that the systems serving a Residence including, by way of example only, heating and air conditioning and electrical systems, will operate or perform at a level or standard greater than the minimum specifications of the manufacturer.

(p) Asbestos. Asbestos can found as accessory minerals in mineral deposits and occurs in its natural state in some rock formations. Declarant, Approved Builder or the Association shall not conduct tests to determine the presence or absence of any type of naturally occurring asbestos in the soil of the Community. Declarant, Approved Builder, and the Association makes no representations or warranties concerning the presence or absence of said minerals.

(q) Gases. The grading of the soil and other elements created by nature, as well as building materials developed by humans, many times create unwanted and undesired gases and other contaminants in homes and residential buildings, both new and used. Also, since energy conservation has become a concern, there is a need to build homes and residential buildings that are more airtight. As a result, these homes and residential buildings trap unwanted gases in different degrees depending on how each person lives within their home or such residential building. To date measurements of such unwanted gases (such as the radon gas described below and carbon dioxide) are reported as parts of the air they occupy. Since the quality of air a person breathes can affect health, Declarant and Approved Builder recommends frequent airing of a Residence to introduce fresh air uncontaminated with such gases.

(r) Radon. The United States Environmental Protection Agency ("EPA") has indicated that a number of homes and residential buildings in the United States experience elevated levels of radon gas. Radon is a naturally occurring gas that is caused by radioactive decay of the element radium. Since radium is contained in the earth's crust and dissolves readily in water, radon can be found virtually everywhere and can enter the home or residential buildings through a variety of sources. Owners or Occupants seeking information about radon can contact the EPA or a state environmental office. Declarant, Approved Builder, and the Association does not have any expertise in the measurement or reduction of radon in homes or residential buildings or regarding acceptable levels or possible health



hazards associated with radon. Moreover, Declarant, Approved Builder, and the Association makes no warranty or representation of any kind, express or implied, regarding the presence or absence of radon gas, or regarding the effectiveness of any architectural activities for reducing the presence of radon.

(s) Carbon Monoxide. Carbon monoxide is a dangerous gas that typically cannot be smelled or seen. It is produced as a common by-product of the combustion (burning) of fossil fuels. Most fuel burning equipment (natural gas, gasoline, propane, fuel oil, and wood), if properly installed and maintained, produces little carbon monoxide. The by-products of combustion are usually vented to the outside. However, if there is a shortage of oxygen to the burner, or the venting is not adequate, carbon monoxide production can increase to dangerous levels. Common sources of carbon monoxide include gasoline engines running in closed garages, fuel-burning space heaters or water heaters with improper venting, and blocked chimneys or vent pipes. Each Owner should have a qualified professional routinely maintain and inspect all heating systems and any fuel-burning appliances serving the Owner's Residence annually to ensure they are in good working condition. Each Owner should have a qualified professional routinely inspect appliance vents in the Residence annually for blockages, corrosion, cracks or leakage. Each Owner should consider installing and maintaining a carbon monoxide detector and alarm that measures the amount of carbon monoxide in the air and sounds an alarm at certain levels. The detector should be considered as a backup and not as a replacement for proper use and maintenance of fuel-burning appliances.

(t) Utility Infrastructure. Declarant and Approved Builder make no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

(u) Plans. Any floor plans, advertising materials, brochures, renderings, drawings, and the like, which purport to depict the homes to be constructed on Lots in the Community or any portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Due to the unique nature of the construction process and site conditions, room dimensions, size and elevations may vary from home to home within the Community.

(v) Encroachments. Improvements may have been constructed on Adjacent Properties that encroach onto the Community.

(w) Trees. Trees, plants, shrubbery, rocks and landscaping existing within the Community may be adversely affected or removed during development construction activities and homebuilding activities within the Community.

(x) Erosion. There may be drainage systems for surface water runoff within the Community and portions of the Community may be subject to erosion and/or flooding during certain types of weather conditions.

(y) Sound and Vibrations. Residences in the Community will not be soundproof, free of vibrations, and sound and vibrations may be transmitted from one Lot to another, from the Common Property to a Lot and from outside of the Community to a Lot. By way of example only, sound and vibrations may be felt from such things as sirens, whistles, horns, the playing of music, equipment being operated, construction activity, building and grounds maintenance being performed, ambulances, airplanes, trains and other generators of sound and vibrations typically found in and around a neighborhood.

(z) Odors. There may be odors which affect the Community.

(aa) Water. Water may pond on various portions of the Community having impervious surfaces.



(bb) Art. Any artwork displayed in the Common Property, model homes, construction offices and sales offices within the Community may be the property of Declarant or Approved Builder, and not the Association. Such artwork may be the property of third party(ies) and such third party(ies) shall retain the right to remove or alter such artwork at any time. Artwork may also belong to other third parties, such as artists and galleries, who have permitted the artwork to be displayed temporarily on the Common Property, model homes, construction offices and sales offices.

(cc) Media Equipment. Electronic media equipment located in the Common Property (including, but not limited to televisions) may be the property of third party(ies) and such third party(ies) shall retain the right to remove or alter such equipment at any time.

(dd) Images and Photography. At various times, Declarant, Approved Builder, and the Association may use exterior images, pictures and photography of the Community, including Residences, for publication, advertising, sales and marketing purposes. Photography and film activities (including bright lighting) related to sales and marketing of the Community may occur at various times of the day within the Community during the Sales Period.

(ee) Marketing. From time to time, there may be marketing collateral throughout the Community, including, but not limited to, signs, flags, banners, media advertising, etc.

(ff) Community and Street Names. The name of the Community and street names within the Community may change.

(gg) Conditions Shown on Survey. The Community and the Lots contained therein are subject to those conditions shown on the Survey, including, but not limited to various buffers, channel easements, sanitary sewer easements, right-of-way easements, lakes, wetlands, and flood plains.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the undersigned, Declarant herein, hereby executes this instrument by and through its duly authorized officers and under seal this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**DECLARANT:**

**OH JC Trickum, LLC**  
a Georgia limited liability company

By: \_\_\_\_\_(SEAL)  
Edward Pease, Manager

Signed, sealed, and delivered  
this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

[NOTARY SEAL]

By: \_\_\_\_\_(SEAL)  
James B. Chapman, Manager

Signed, sealed, and delivered  
this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

[NOTARY SEAL]



## EXHIBIT "A"

### SUBMITTED PROPERTY

**ALL THAT TRACT OR PARCEL OF** land lying and being in Land Lots 768, 816 and 817, 15<sup>th</sup> District, 2<sup>nd</sup> Section, Cherokee County, Georgia, being more particularly described as follows:

**BEGINNING** at an iron pin found located at the Land Lot corner common to Land Lots 768, 769, 816 and 817, that is the **POINT OF BEGINNING**; thence along the Land Lot Line common to Land Lots 768 and 769, North 00°19'51" East, a distance of 817.78 feet to a point; thence leaving said Land Lot Line, 82.55 feet along a curve to the left, said curve having a chord of North 15°49'04" East 82.54 feet and a radius of 2533.82 feet to a point; thence 27.87 feet along a curve to the right, said curve having a chord of North 21°28'36" East 27.81 feet and a radius of 121.13 feet to a point located on the Land Lot Line common to Land Lots 745 and 768; thence along said Land Lot Line, South 88°26'57" East, a distance of 545.65 feet to an iron pin found; thence continuing along said Land Lot Line South 87°52'36" East, a distance of 651.47 feet to a point located on the Land Lot corner common to Land Lots 745, 746, 767 and 768; thence along the Land Lot Line common to Land Lots 767 and 768, South 00°22'04" East, a distance of 1161.08 feet to a point; thence passing through Land Lot corner common to Land Lot 767, 768, 817 and 818 and along the Land Lot Line common to Land Lots 817 and 818, South 00°05'07" East, a distance of 1364.41 feet to a point located on the Land Lot corner common to Land Lot 817, 818, 839 and 840; thence along the Land Lot Line common to Land Lot 817 and 840, North 89°34'22" West, a distance of 911.63 feet to a point located on the eastern right of way of Trickum Road (50-foot public right of way); thence along said right of way North 11°18'37" West, a distance of 1.35 feet to a point; thence continuing along said right of way North 68°48'02" East, a distance of 52.39 feet to a point; thence continuing along said right of way North 21°11'58" West, a distance of 30.00 feet to a point; thence continuing along said right of way South 68°48'02" West, a distance of 47.16 feet to a point; thence continuing along said right of way North 11°18'37" West, a distance of 285.16 feet to a point; thence continuing along said right of way 178.28 feet along a curve to the left, said curve having a chord of North 25°26'03" West 176.48 feet and a radius of 361.60 feet to a point; thence continuing along said right of way North 39°33'31" West, a distance of 99.63 feet to a point; thence continuing along said right of way North 41°05'54" West, a distance of 86.31 feet to a point; thence continuing along said right of way North 38°36'56" West, a distance of 83.95 feet to a point; thence continuing along said right of way North 39°50'08" West, a distance of 148.89 feet to a point; thence continuing along said right of way 87.27 feet along a curve to the right, said curve having a chord of North 20°21'49" West 85.60 feet and a radius of 128.40 feet to a point; thence continuing along said right of way 183.12 feet along a curve to the left, said curve having a chord of North 02°39'34" West 183.09 feet and a radius of 2968.26 feet to a point; thence leaving said right of way, South 88°59'14" East, a distance of 233.13 feet to a point; thence North 03°46'18" East, a distance of 320.17 feet to a point located on the Land Lot Line common to Land Lot 768 and 817; thence along said Land Lot Line, North 88°23'34" West, a distance of 143.73 feet to a point, being the **POINT OF BEGINNING**. Said tract contains 68.458 Acres.

The above referenced property is more particularly shown on that ALTA/ACSM Land Title Survey prepared for OH JC Trickum, LLC, prepared by McFarland-Dyer & Associates, certified by J. Chris Whitley, Georgia Registered Land Surveyor No. 2672, dated August 21, 2015.