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

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**HAYNES CREEK SUBDIVISION**

**208519**

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

**FOR**

**HAYNES CREEK SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the date set forth on the signature page hereof by D. R. Horton, Inc., a Delaware corporation ("Declarant").

Declarant is the owner (or if not the owner, with the written consent of such owner as attached hereto) of the real property described in Exhibit "A," which is attached and incorporated by reference. By this Declaration, Declarant imposes upon the Community mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Community, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Community. In furtherance of such plan, Declarant has caused or intends to cause the Haynes Creek Homeowners' Association, Inc., to be formed as a Georgia nonprofit corporation to own, operate, and maintain Common Areas, as defined below, and to administer and enforce the provisions of the Governing Documents.

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

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

**Article I**  
**DEFINITIONS**

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

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

"Articles of Incorporation" or "Articles": The Articles of Incorporation of Haynes Creek Homeowners' Association, Inc., as filed with the Secretary of State of the State of Georgia.

"Association": Haynes Creek Homeowners' Association, Inc., a Georgia non-profit corporation, its successors or assigns.

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

"By-Laws": The By-Laws of Haynes Creek Homeowners' Association, Inc., attached as Exhibit "E," as they may be amended.

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

"Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate.

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~~"Community": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VIII.~~

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community as initially established by Declarant. After Declarant no longer has the right to appoint and remove directors and officers of the Association, such standard may be more specifically determined by the Board of Directors.

"Declarant": D.R. Horton, Inc. a Delaware corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

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

"Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, any architectural or design standards as provided for herein, and the Use Restrictions and Rules, each as they may be amended.

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

"Member": A Person subject to membership in the Association pursuant to Section 3.2.

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

"Mortgagee": A beneficiary or holder of a Mortgage.

"Neighborhood": A separately developed and denominated residential area within the Community which has been so designated on Exhibit "A" hereof or in one or more Supplementary Declarations. The Declarant shall have the right to designate separate Neighborhood status and change the Neighborhood status of any previously designated Neighborhood for any property in the Community. A Neighborhood may (but is not required to) have a separate incorporated mandatory membership Neighborhood association.

"Neighborhood Assessments": Assessments levied in accordance with Section 9.7.

"Neighborhood Expense": shall mean the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplementary Declaration(s) applicable to such Neighborhood(s).

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

"Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

"Plat": The recorded final plat applicable to the Community or phase of the Community.

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

"Special Assessment": Assessments levied in accordance with Section 9.5.

"Specific Assessment": Assessments levied in accordance with Section 9.6.

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

"Unit": A portion of the Community, whether improved or unimproved, which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a Recorded subdivision Plat with respect to any portion of the Community, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Areas or property dedicated to the public.

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

"Use Restrictions and Rules": Those use restrictions and rules affecting the Community, which may be adopted, modified, and repealed as set forth in Article XI. The initial Use Restrictions and Rules are set forth on Exhibit "C."

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

### 2.1. Common Area.

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

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board and the membership to adopt rules regulating the use and enjoyment of the Common Area;
- (d) The Board's right to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such



Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to the requirements set forth herein;

(f) The Board's right to impose reasonable membership requirements and charge reasonable use fees for the use of any recreational facilities or other portions of the Common Area;

(g) The Board's right to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of such use fees as the Board may establish;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred subject to the requirements set forth herein; and

(i) Declarant's right to use such property without payment or charge for such purposes as Declarant, in its sole discretion, deem necessary and proper.

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

2.2. No Partition.

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

2.3. Condemnation.

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

2.4. Actions Requiring Owner Approval.

If either the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA") is insuring or guaranteeing the Mortgage on any

Unit, then so long as such actions are required by HUD or VA to be approved, the following actions shall require the prior approval of Members representing not less than two-thirds (2/3) of the total votes in the Association and the consent of Declarant, if Declarant owns property described on Exhibit "A" or "B": merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B;" and dedication, conveyance, or mortgaging of Common Area except as required by Sections 5.2, 5.5 and 5.7. Notwithstanding anything to the contrary in Section 2.3 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without membership approval.

2.5. Use of Recreational Facilities.

Declarant may, but shall not be required to, construct recreational facilities on portions of the Common Area such as: tennis courts, a pool, bathhouse, viewing areas, and the like. In the event Declarant constructs such recreational facilities, the following shall apply:

(a) For so long as Declarant owns any property subject to this Declaration or may annex additional property to this Declaration, Declarant shall have the right to grant to persons who are not members of the Association the right to use the recreational facilities. The extent and duration of nonmember use and the fee to be charged shall be determined solely by Declarant. The Declarant may grant nonmember use rights to Persons as an easement appurtenant to such Person's residential real property so that such use rights shall automatically ~~inure to the benefit of such Persons and their heirs and assigns.~~

(b) Any use right granted to nonmembers which extends beyond the time period specified in (a) above shall be valid and may not terminate by the Association so long as the terms and conditions imposed upon nonmember use by the Declarant are complied with by the nonmember user.

(c) Declarant hereby reserves unto itself, its successors and assigns, a non-exclusive, perpetual right and privilege, and easement with respect to the Community for the benefit of Declarant, its successors, assigns, and the above nonmember users, without obligation or charge. These rights shall include, without limitation, an easement for travel across all Common Property in the Community. Declarant shall not be responsible for any fees to be paid by such nonmember.

**Article III**  
**MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association.

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

perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.

3.2. Membership.

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

3.3. Voting.

Members shall be entitled to one vote for each Unit owned. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Association's Secretary prior to any meeting. The Unit's vote shall be suspended in the event more than one Person seeks to exercise it.

**Article IV**  
**NEIGHBORHOODS AND LIMITED COMMON AREA**

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4.1. Neighborhood Designation.

Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, as long as it has the right unilaterally to annex property, to establish separately developed residential Neighborhoods, recreational areas, and amenity areas, or some, all, or none of these, within the Community, to designate Limited Common Area for the exclusive use of one or more, but less than all Neighborhoods. Every Unit situated within a designated Neighborhood may be subjected to additional covenants, conditions, restrictions, and additional assessments for services provided to Units within such designated Neighborhood. Such additional covenants may be set forth in this Declaration or a Supplemental Declaration.

4.2. Neighborhood Services.

Any Neighborhood may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. If such service is authorized by the Board, upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be as a Neighborhood Assessment.

4.3. Limited Common Area.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

4.4. Designation of Limited Common Area.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units and/or Neighborhoods, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 8.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of eligible Owners representing at least majority votes in the Association, including a majority of the votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1, any such assignment or reassignment shall also require Declarant's written consent.

4.5. Use by Others.

Upon approval of Owners representing at least a majority of Units within the Neighborhood to which any Limited Common Area is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area.

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

5.1. Common Area.

The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and maintain the Common Area and all improvements thereon in a manner consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under the Governing Documents, the cost of which shall be a Common Expense.

5.2. Personal Property and Real Property for Common Use.

The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B," personal property, and leasehold and other property interests. Such property shall be accepted by the Association "as is" and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements to the property conveyed to the Association, including, without limitation, dredging or removing silt from lakes or ponds. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Community originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

5.3. Enforcement.

The Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than ~~30 days delinquent in paying any assessment or other charge due to the Association.~~ All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action. So long as the Declarant owns any property described on Exhibit "A" or "B", the Declarant may but shall not be obligated to, take any enforcement action, or exercise any right on behalf of or independent from the Association.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

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

5.4. Implied Rights; Board Authority.

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

5.5. Governmental Interests.

For so long as Declarant owns any property described on Exhibits "A" or "B," Declarant may designate sites within the Community for fire, police, and utility facilities; public schools and parks; and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant.

5.6. Indemnification.

(a) The Association shall indemnify every officer, director, and committee member, including members of the committees established under Article X, against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, ~~except that such obligation to indemnify shall be limited to those~~ actions for which liability is limited under this Section and Georgia law.

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

(c) Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in Section 3.25 of the By-Laws.

5.7. Dedication of Common Areas.

The Association, acting through the Board, may dedicate portions of the Common Areas to Gwinnett County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity.

5.8. Safety and Security.

**Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in HAYNES CREEK. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.**

**No representation or warranty is made that any security system or measures, including any mechanism or system for limiting access to the Community, can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, and Declarant are not insurers or guarantors of safety or security and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

**Article VI**  
**MAINTENANCE**

6.1. Association's Responsibility.

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

(i) the Common Area and Limited Common Area including any recreational amenities, open space, and all landscaping, signage, lighting, irrigation systems and equipment, fences, walls, and other structures and improvements, sidewalks, paths, and trails, situated upon the Common Area;

(ii) landscaping, signage, and sidewalks within public rights-of-way within or adjacent to the Community, except to the extent that such responsibility is assumed by a governmental or quasi-governmental body or public utility;

(iii) any lakes, ponds, streams, and/or wetlands located within the Community and all drainage systems, storm water retention, or detention systems for the Community to the extent maintenance is required in the Board's opinion and such area is not to be maintained by a governmental entity or third party;

(iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(v) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Area of Common Responsibility and to be maintained by the Association unless and until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) There are hereby reserved to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under this Declaration. ~~The Association shall maintain the facilities and improvements within the Area of~~ Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the total votes in the Association and Declarant, so long as Declarant owns any property within the Community, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with Declarant's prior written approval as long as Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(c) Except as otherwise provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

## 6.2. Owner's Responsibility.

Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard



and all applicable covenants, unless such maintenance responsibility is otherwise assumed by the Association or assigned to the Association pursuant to this Declaration, any Supplemental Declaration, or other covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and levy a Specific Assessment. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

6.3. Standard of Performance.

Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

**Article VII**  
**INSURANCE AND CASUALTY LOSSES**

7.1. Association Insurance.

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

(i) Blanket property insurance covering the full replacement cost of all insurable improvements from "risks of direct physical loss" for the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has responsibility for maintenance, repair, and/or replacement in the event of a casualty, regardless of ownership;

(ii) Commercial general liability insurance on the Area of Common Responsibility insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and umbrella coverage) shall have a limit of at least \$500,000.00 per occurrence with respect to bodily injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain additional coverages or limits;

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

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of insurance coverage. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon written request, to any Member. The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may levy a Specific Assessment of the full amount of such deductible against such Owner(s) and their Units pursuant to Section 9.6.

The Board is authorized to obtain the insurance policies coverages specified in this Declaration through the Declarant and reimburse the Declarant for the cost thereof. Insurance obtained by or through the Declarant shall satisfy all insurance responsibilities of the Board.

All insurance coverage obtained by the Board shall:

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

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

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

(iv) contain an inflation guard endorsement; and

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

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

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

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

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

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

(x) a cross liability provision.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Community covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims. Any damage to or destruction of the improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 67% of the total votes in the Association, and Declarant, so long as Declarant owns property described in Exhibit "A" or "B," decide not to repair or reconstruct. If the Association determines that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

~~Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.~~

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

## 7.2. Owners' Insurance.

Each Owner shall be responsible for insuring his or her own Unit and any property maintained by the Owner or the occupants of its Unit, their respective family members, guests, or invitees, within the Unit or elsewhere in the Community.

In the event of damage or destruction of structures on or comprising a Unit, the Owner shall, within 180 days thereafter, complete repair or reconstruction of the damaged structures in a manner consistent with the original construction or such other plans and specification as are approved in accordance with Article X or, in the alternative, the Owners shall clear the Unit of all debris and ruins and thereafter maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Unit, their family, guests, or invitees, nor shall the Association or Declarant be held liable for the conditions of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of the Association, Declarant, or their respective agents or employees.

**Article VIII**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

8.1. Annexation Without Approval of Membership.

Until all property described on Exhibit "B" has been subjected to this Declaration or ten years after the Recording of this Declaration, whichever is earlier, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. ~~Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than~~ Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant to annex or develop any of the property set forth in Exhibit "B".

8.2. Annexation With Approval of Membership.

The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing at least two-thirds (2/3) of the total votes in the Association present in person or by proxy at a meeting duly called for such purpose, and the consent of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1. Such annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by Declarant, if Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

8.3. Withdrawal of Property.

Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Section 8.1, for the purpose of removing any portion of

the Community from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not Declarant.

#### 8.4. Additional Covenants and Easements.

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

### **Article IX** **ASSESSMENTS**

#### 9.1. Creation of Assessments.

(a) Types. There are hereby created, and the Association is authorized to levy three types of assessments: (a) General Assessments as described in Section 9.3; (b) Special Assessments as described in Section 9.5; ~~(c) Specific Assessments as described in Section 9.6;~~ and Neighborhood Assessments as described in Section 9.7. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Georgia law), late charges established by Board resolution, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit and also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit payment in two or more installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may accelerate the installments and require all of the General Assessment to be paid in full immediately.

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

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

#### 9.2. Declarant's Obligation for Assessments.

Declarant shall not be liable for payment of assessments on its unsold Units. ~~However, Declarant may, but shall not be obligated to, annually elect to contribute to the~~ Association the difference between the amount of assessments levied on all other Units subject to assessment and the amount of the Association's actual expenditures during the fiscal year (a "Subsidy"). Any Subsidy may be treated, in Declarant's discretion, as either: a voluntary contribution; an advance against future assessments (if any); or a loan by Declarant to the Association. A Subsidy may be evidenced by one or more promissory notes from the Association in favor of Declarant or Declarant may cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community.

Any Subsidy shall be disclosed as a line item in the Common Expense budget. The payment of a Subsidy in any year shall under no circumstances obligate Declarant to continue payment of such Subsidy in future years.

#### 9.3. Computation of General Assessments.

At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year. General Assessments shall be fixed at a uniform rate for all Units subject to assessment under Section 9.8. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units.

The budget and notice of the amount of the General Assessment for the following years shall be available to each Owner at least thirty (30) days prior to the assessment or installment due date. Such budget and assessment shall become effective unless disapproved at a meeting by at least 67% of the Members and by Declarant, so long as Declarant owns any property described on Exhibits "A" or "B." There shall be no obligation to call such a meeting unless a petition for a special meeting is presented to the Board within 10 days of the delivery of the notice of assessment.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

9.4. Reserve Budget and Capital Contribution.

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

~~(b) Upon acquisition of record title to a Unit by the first Owner other than Declarant or a builder, a contribution of \$600.00 ("Initiation Fee") shall be made by or on behalf of the purchaser to the Association as set forth below. The Initiation Fee shall be in addition to, not in lieu of, any annual or special assessments. The Initiation Fee shall be payable at Closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The Initiation Fee shall be deposited into an account of the Association and disbursed from that account (a) \$500.00 for operating expenses and costs of the Association in accordance with the Declaration and Bylaws, as amended, and (b) \$100.00 of the Initiation Fee shall be held by the Association as a long term "Maintenance Reserve" to be disbursed by the Association for maintenance of any property which the Association is required or permitted to maintain in its sole discretion. The Initiation Fee referred to in this paragraph is payable only one time, and will not be charged subsequent purchasers of the Unit.~~

9.5. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any Special Assessment which would exceed the amount of the General Assessment in any fiscal year shall require the affirmative vote or written consent of a majority of the total votes in the Association, and the affirmative vote or written consent of Declarant, so long as Declarant owns any property described on Exhibit "A" or "B." Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in

installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied equally on all Units, subject to assessment under Section 9.8.

9.6. Specific Assessments.

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

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

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws, or rules or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the By-Laws before levying any Specific Assessment under this subsection (b).

9.7. Neighborhood Assessments.

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The Association may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for the primary benefit of property within such Neighborhood. Neighborhood assessments shall be levied as specifically budgeted from time to time by the Board of Directors for expense items such as maintenance, insurance, or special services.

9.8. Lien for Assessments.

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

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While the Association owns a Unit following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged the foreclosed Unit had it not been acquired by the



Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 9.8, including such acquirer, its successors and assigns.

9.9. Date of Commencement of Assessments.

The obligation to pay assessments shall commence as to each Unit on the first day of the month following the transfer or conveyance of an improved Unit with a certificate of occupancy to a Person for residential use: (a) the month in which the Board establishes the Common Expense budget and levies assessments, or (b) the date upon which the Unit is conveyed or transferred from Declarant to an Owner for residential occupancy, whichever is later. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

9.10. Failure to Assess.

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

9.11. Exempt Property.

The following property shall be exempt from payment of assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility pursuant to Section 6.1; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

**Article X**  
**ARCHITECTURAL STANDARDS**

10.1. General.

No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, other site work, exterior alteration of existing improvements, painting or modifying fences, and planting or removal of landscaping materials) shall take place except in compliance with this Article and approval of the appropriate entity under Section 10.2. Notwithstanding this, the Board may, by resolution, exempt certain activities from the application and approval requirements of this Article provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint, or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of Declarant or the Association.

10.2. Architectural Review.

So long as Declarant owns any property described in Exhibit "A" or "B" for development or sale, Declarant shall have exclusive authority to administer and enforce ~~architectural controls under this Article and to review and act upon all applications for~~ construction and modifications within the Community. Declarant's rights under this Article X may be assigned in whole or in part.

Upon the expiration or assignment of Declarant's authority to control architectural review for all or a portion of the Community, the Board shall create and appoint an Architectural Review Committee ("ARC"). The ARC shall consist of at least three, but not more than five, persons who shall serve and may be removed in the Board's discretion; provided, as long as Declarant owns any property described on Exhibits "A" or "B," it shall be entitled to appoint one member. Until Declarant's authority expires, the ARC shall have no rights or authority except as Declarant may assign. Upon termination of Declarant's authority over architectural review, the ARC shall have authority over modifications, additions, or alterations made on or to existing structures on Units and the adjacent open space. At any time during the review process, so long as it owns any property described in Exhibit "A" or "B," Declarant shall have the right to veto any action taken by the ARC.

For the purposes of this Declaration, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." Reviewers of applications need not be Members. Reviewers may delegate certain rights and responsibilities to qualified individuals to act on its behalf, and their compensation, if any, shall be established from time to time by Declarant or the Board, as applicable. Fees for review of applications under this Article may be required to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

10.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant may, but is not obligated to, prepare architectural standards or design guidelines ("Design Guidelines") for the Community. The Design Guidelines are not the exclusive basis for decisions but they may provide guidance on specific matters. Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any property described on Exhibit "A" or "B." Thereafter, the ARC shall have the authority to amend the Design Guidelines with the consent of the Board.

(b) Procedures. Prior to commencing any activity subject to review, an Owner shall submit an application for approval of the proposed work to the Reviewer. Such application shall be in the form required by the Reviewer and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation system, utility facilities layout, and other features of proposed construction, as applicable. Before the Owner may begin the proposed activity, the application must be approved in accordance with the procedures described below.

In reviewing each submission, the Reviewer may consider whatever factors it deems relevant, including harmony of external design with surrounding structures and environment and location in relation to surrounding structures, topography, and finish grade elevation. Decisions of the Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are purely subjective and may vary over time and among different Persons. The Reviewer may require relocation of native plants within the construction site, screening, and landscaping as a condition of approval of any submission.

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

If construction does not commence on a project which has been approved within 180 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval. If construction is not completed on a project for which plans have been approved within a period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

10.4. No Waiver of Future Approvals.

Each Owner acknowledges that the Reviewer will change from time to time and that interpretation, application, and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

10.5. Variance.

The Reviewer may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship, or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. For purposes of this Section, the inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

10.6. Limitation of Liability.

The requirements and procedures established by this Article are intended to enhance the overall aesthetics of the Community and shall not create any duty to any Person. A Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring the appropriateness of soils, drainage, and general site work. Neither Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify a reviewing body and their members.

10.7. Enforcement.

Any structure or improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming, unless a variance has been granted. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant or the Board shall have the right to Record a notice of violation and to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the Owner and Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by a Reviewer granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the reviewing bodies.

## **Article XI**

### **USE RESTRICTIONS AND RULES**

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#### 11.1. Plan of Development; Applicability; Effect.

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

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests, and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

#### 11.2. Authority to Promulgate Use Restrictions and Rules.

The initial Use Restrictions and Rules applicable to all of the Community are attached as Exhibit "C" to this Declaration and may be modified in whole or in part, repealed, or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days

prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Members representing at least 51% of the total Association votes and by Declarant, so long as Declarant owns any property described on Exhibit "A" or "B." The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of Declarant, so long as Declarant owns any property described on Exhibit "A" or "B."

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

(d) The foregoing procedures shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation, speed limits, or landscaping on the Common Area. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

(e) The foregoing procedures shall not restrict amendments to this Declaration or the Design Guidelines enacted under Section 10.3.

#### 11.3. Owners' Acknowledgment.

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

#### 11.4. Rights of Owners.

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

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

(b) Signs. No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. For Sale signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Unit. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Unit as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

(c) Holiday Displays. The Board may adopt rules governing or prohibiting the display of religious and holiday signs, symbols, and decorations outside structures, and may adopt time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

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~~(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of others, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.~~

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, and it may impose a reasonable fee on the lease or transfer of any Unit based on the costs to the Association of administering that lease or transfer.

(g) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Community.

(h) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners

without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

(i) Activities Incidental to Construction. No rule or action by the Association shall impede Declarant or builders authorized by Declarant from maintaining upon Common Area and Units which they own any facilities necessary or incidental to construction or sale of Units. By way of example and not limitation, no rule shall prohibit Declarant or builders authorized by Declarant from installing signs, maintaining temporary structures for use during construction of a Unit, or from using any dwelling on a Unit as a sales office.

The limitations in this Section 11.4 shall apply only to Use Restrictions and Rules adopted or amended in accordance with Section 11.2; they shall not apply to amendments to this Declaration adopted in accordance with Section 16.2.

## **Article XII** **EASEMENTS**

### 12.1. Easements of Encroachment.

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

### 12.2. Easements for Utilities, Etc.

(a) There are hereby reserved to Declarant, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Community (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining, and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways, and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which Declarant or the Association owns or within easements designated for such purposes on Recorded plats of the Community.



Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters, and boxes, as applicable.

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

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

12.3. Easements for Drainage.

Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water across all Community property for the purpose of altering drainage and water flow. This right shall include, but is not limited to, altering swales, installing ~~drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow~~ across any Unit or any property in the Community. 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.

12.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on or through such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.

12.5. Right of Entry.

The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article VI hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Such

right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

12.6. Landscaping and Signage Easements.

Declarant and the Association shall have perpetual, non-exclusive easements exercisable by their respective employees, agents, and contractors over those portions of the Community and the Units designated as "Landscaping and Signage Easements" (or similar label) on the Recorded subdivision Plats relating to the Community for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, and landscaping within the easement area. The Declarant and Association shall have a blanket easement to pump water from any water bodies within the Community for irrigation purposes, subject to any applicable laws or regulations. No fences, structures, driveways, plantings, swings, wood piles, dog runs, or any other objects, temporary or permanent, shall be permitted in such areas without the Association's prior written approval, other than those initially installed by Declarant. Nothing herein shall obligate Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any Landscaping and Signage Easement.

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12.7. Easement to Inspect and Right to Correct.

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

12.8 Construction and Sale Easement.

Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on development activities, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be

required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

(a) The right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community as well as any Unit in the Community,

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

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

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

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

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

~~(g) The right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities; and~~

(h) Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

#### 12.9 Fence Easement.

Declarant hereby reserves an easement across any Unit which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

**Article XIII**  
**MORTGAGEE PROVISIONS**

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

13.1. Notices of Action.

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

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

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

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

13.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.3. Notice to Association.

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

13.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

13.5. HUD/VA Approval.

As long as Declarant has the right to appoint and remove Association officers and directors, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either agency is insuring or guaranteeing the Mortgage on any Unit; Mortgage, consolidation, or dissolution of the Association; annexation of property other than that described on Exhibit "B;" dedication, conveyance, or mortgaging of Common Area; or material amendment of this Declaration or the By-Laws.

**Article XIV**  
**DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly Recorded.

Declarant and builders authorized by Declarant may maintain and carry on without fee or charge upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of ~~Units, including, but not limited to, business offices, signs, model homes, and sales offices.~~ Declarant and authorized builders shall have easements for access to and use of such facilities. Declarant shall have the right and an easement to maintain signs in the Area of Common Responsibility for ten (10) years from recording this Declaration.

No Person shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any instrument Recorded without such consent shall be void and of no force and effect unless subsequently approved by written consent signed by Declarant and Recorded.

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

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules, architectural standard, or Design Guideline made shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Community primarily for development and sale.

**Article XV**  
**DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

15.1. Agreement to Avoid Litigation.

Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Community, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 15.2 ("Claims") shall be resolved using the procedures set forth in Section 15.3 in lieu of filing suit in any court.

15.2. Claims.

Unless specifically exempted below, all claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Community shall be subject to the provisions of Section 15.3.

Notwithstanding the above, unless all parties otherwise agree, the following shall not ~~be Claims and shall not be subject to the provisions of Section 15.3:~~

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article IX (Assessments);
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article X (Architectural Standards) and Article XI (Use Restrictions and Rules);
- (c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 15.3(a).

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 15.3.

15.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed resolution or remedy; and
4. that Claimant's desire to meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

(c) Mediation. If the Parties do not resolve the Claim within 30 days of the ~~date of the Notice (or within such other period as may be agreed upon by the Parties), Claimant~~ shall have 30 additional days to submit the Claim to mediation under the auspices of Henning Mediation and Arbitration Services or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Metro-Atlanta area. Each Bound Party shall present the mediator with a summary of the Claim prior to the mediation session.

If Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date mediation was terminated ("Termination of Mediation"). Except as provided in Section 15.2(d), the Claimant shall then be entitled to file suit or initiate administrative proceedings on the Claim as appropriate.

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

(d) Final and Binding Arbitration. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Official Code of Georgia Annotated, Section 9-9-1, *et seq.* If the Parties do not voluntarily agree on an arbitrator, Henning Mediation and Arbitration Services shall be the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

This subsection (d) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Georgia. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Georgia.

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

#### 15.4 Allocation of Costs of Resolving Claims.

Subject to Section 15.4 (d), each Party shall bear its own costs, including any attorneys fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

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Any award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

#### 15.5 Enforcement of Resolution.

After resolution of any Claim, if any party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.



**Article XVI**  
**GENERAL PROVISIONS**

16.1. Duration.

Subject to the limitations of Georgia law, this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall remain in effect for the maximum period permitted and shall automatically be extended at the expiration of such period for successive periods of 20 years each. Notwithstanding the above, 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 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

16.2. Amendment.

This Declaration may be amended as provided in this Section. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

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(a) By Declarant. So long as Declarant owns any property subject to, or which may be subjected to, this Declaration, it may unilaterally amend this Declaration to (i) bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) enable any title insurance company to issue title insurance coverage; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans; or (iv) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans; provided, any such amendment shall not adversely affect the title to any Owner's Unit unless any such Unit Owner consents in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Unit without the consent of the affected Unit's Owner.

(b) By the Owners. This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Members representing at least two-thirds (2/3) of the votes in the Association and the consent of Declarant (so long as Declarant owns any of the property described in Exhibit "A" or "B").

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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

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

16.3. Severability.

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

16.4. Litigation.

Except as provided below, no judicial, administrative, or arbitration proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article IX; (c) proceedings involving challenges to *ad valorem* taxation; or (d) counter-claims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is ~~approved by the percentage of votes, and pursuant to the same procedures, necessary to institute~~ proceedings as provided above. This Section shall apply in addition to the provisions of Article XV, if applicable.

16.5. Cumulative Effect: Conflict.

The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other Recorded declaration, covenants, and restrictions applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

16.6. Compliance.

Every Owner and occupant of any Unit shall comply with the Governing Documents. Subject to the terms of Article XV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 5.3.

16.7. Notice of Sale or Transfer of Title.

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

16.8. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 16.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

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IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration  
this 15 day of Sept, 2003.

**DECLARANT:**

By: *Anty W. [Signature]* [SEAL]

Its: *V.A.*

Attest: *Ronnie B. Yoder* [SEAL]

Its: *Asst. Secretary*

Signed, sealed, and delivered  
this 15<sup>th</sup> day of September, 2003,  
in the presence of:

*[Signature]*  
WITNESS

*Barbara West*  
NOTARY PUBLIC

My Commission Expires: 3-3-07

[AFFIX NOTARY SEAL]



EXHIBIT "A"

Page 1 of 2

TRACT ONE  
92.029 ACRES

All that tract or parcel of land lying and being in Land Lot 63 of the 5<sup>th</sup> Land District, Gwinnett County, Georgia, containing 92.029 acres, more or less, and being more particularly described as follows:

BEGINNING at an iron pin at the Land Lot Corner common to Land Lots 62, 63, 66, & 67; thence along the Land Lot Line common to Land Lots 63 and 66, South 31 degrees 18 minutes 49 seconds East, 100.00 feet to an iron pin, being the TRUE POINT OF BEGINNING; thence continuing along said Land Lot Line, South 31 degrees 18 minutes 49 seconds East, 1895.76 feet to an iron pin; thence South 58 degrees 56 minutes 25 seconds West, 1537.36 feet to a point; thence North 32 degrees 35 minutes 50 seconds West, 117.15 feet to an iron pin; thence North 52 degrees 58 minutes 02 seconds West, 181.58 feet to an iron pin; thence South 42 degrees 19 minutes 19 seconds West, 29.46 feet to an iron pin; thence North 59 degrees 56 minutes 51 seconds West, 125.00 feet to an iron pin; thence North 65 degrees 13 minutes 45 seconds West, 50.21 feet to an iron pin; thence North 52 degrees 25 minutes 28 seconds West, 158.29 feet to an iron pin; thence North 32 degrees 07 minutes 25 seconds East, 111.99 feet to an iron pin; thence North 04 degrees 20 minutes 15 seconds West, 60.11 feet to an iron pin; thence North 25 degrees 16 minutes 27 seconds East, 100.00 feet to an iron pin; thence South 64 degrees 43 minutes 33 seconds East, 180.00 feet to an iron pin; thence North 25 degrees 16 minutes 27 seconds East, 11.82 feet to an iron pin; thence North 64 degrees 43 minutes 33 seconds West, 194.89 feet to an iron pin; thence North 53 degrees 10 minutes 15 seconds West, 93.98 feet to an iron pin; thence South 74 degrees 48 minutes 34 seconds West, 224.15 feet to an iron pin; thence South 41 degrees 33 minutes 10 seconds West, 510.00 feet to an iron pin; thence North 63 degrees 58 minutes 02 seconds West, 1001.85 feet to an iron pin; thence North 58 degrees 50 minutes 52 seconds East, 3044.07 feet to the TRUE POINT OF BEGINNING. As shown on that survey prepared by Donald G. Holland, Georgia Registered Land Surveyor, dated June 1, 2002, revised June 18, 2002.

EXHIBIT "A"

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TRACT TWO  
146.59 ACRES

All that tract or parcel of land lying and being in Land Lot 62 of the 5<sup>th</sup> Land District, Gwinnett County, Georgia, containing 146.59 acres, more or less, and being more particularly described as follows:

BEGINNING at an iron pin at the Land Lot Corner common to Land Lots 62, 63, 66, & 67, being the TRUE POINT OF BEGINNING; thence along the Land Lot Line common to Land Lots 62 and 63, South 58 degrees 50 minutes 52 seconds West, 2566.94 feet to a point; thence departing said Land Lot Line, North 40 degrees 46 minutes 22 seconds West, 718.12 feet to an iron pin; thence South 83 degrees 41 minutes 32 seconds West, 132.50 feet to a point; thence North 73 degrees 51 minutes 40 seconds West, 248 feet, more or less, to a point in the centerline of Big Haynes Creek; thence along the centerline of Big Haynes Creek and following the meandering thereof, 673 feet, more or less, in a northerly direction to a point; thence departing the creek, North 73 degrees 54 minutes 18 seconds East, 275.5 feet, more or less, to an iron pin; thence North 20 degrees 27 minutes 11 seconds East, 659.56 feet to an iron pin; thence South 60 degrees 45 minutes 53 seconds West, 467 feet, more or less, to a point in the centerline of Big Haynes Creek; thence along the centerline of Big Haynes Creek and following the meandering thereof, 1944 feet, more or less, to a point on the southerly margin of the 80-foot right-of-way of Temple-Johnson Road; thence along the southerly margin of the 80-foot right-of-way of Temple-Johnson Road the following courses and distances: 241.81 feet along the arc of a curve to the right having a radius of 2134.31 feet and chord bearing and distance of South 87 degrees 28 minutes 54 seconds East and 241.68 feet to a point; South 80 degrees 28 minutes 49 seconds East, 51.33 feet to a point; 193.54 feet along the arc of a curve to the right having a radius of 411.76 feet and chord bearing and distance of South 65 degrees 10 minutes 19 seconds East and 191.76 feet to a point; South 54 degrees 24 minutes 21 seconds East, 45.45 feet to a point; 153.85 feet along the arc of a curve to the left having a radius of 592.16 feet and chord bearing and distance of South 60 degrees 37 minutes 58 seconds East and 153.42 feet to a point; South 69 degrees 47 minutes 17 seconds East, 49.22 feet to a point; 305.33 feet along the arc of a curve to the left having a radius of 6619.82 feet and chord bearing and distance of South 72 degrees 45 minutes 03 seconds East and 305.30 feet to a point; South 72 degrees 41 minutes 41 seconds East, 207.95 feet to a point; South 71 degrees 46 minutes 52 seconds East, 146.85 feet to a point; 106.40 feet along the arc of a curve to the left having a radius of 632.60 feet and chord bearing and distance of South 76 degrees 01 minute 06 seconds East and 106.28 feet to a point; thence departing said right-of-way, South 29 degrees 44 minutes 57 seconds East, 1268.77 feet to a point; thence South 31 degrees 21 minutes 47 seconds East, 879.13 feet to the TRUE POINT OF BEGINNING. As shown on that survey prepared by Donald G. Holland, Georgia Registered Land Surveyor, dated June 1, 2002, revised June 18, 2002.

**EXHIBIT "B"**

**Land Subject to Annexation**

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

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

**Initial Use Restrictions and Rules**

The following restrictions shall apply to all of the Community until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article XI of the Declaration.

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

2. **Restricted Activities.** **The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as may be imposed by the Board of Directors:**

(a) **Parking.** The following restrictions shall apply to all Owners, occupants, invitees and guests:

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

(ii) Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage;

(iii) Any vehicle, boat, motorhome, trailer, or recreational vehicle, left upon any portion of the Common Area or within the public rights-of-way within the Community for longer than forty-eight (48) consecutive hours is subject to removal without further notice. The costs of such removal shall be an assessment against the Owner of same;

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

(b) **Animals.** Raising, breeding, or keeping of animals of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. Those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to



the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law;

(c) Quiet Enjoyment. Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

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

(e) Hobbies. Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Annoyance. Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

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

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(h) Dumping. ~~Dumping of grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff;~~

(i) Trash. Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers; Trash cans must be stored/screened so that they may not be seen from the street;

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

(k) Subdivision. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Units which it owns;

(l) Business. Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the structure located on the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve excessive

visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Community; and (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board.

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) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a builder approved by Declarant with respect to its development and sale of the Community or its use of any Units which it owns within the Community.

(m) Garages. Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without the prior approval of the Reviewer pursuant to Article X; and

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(n) Miscellaneous Items. Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, without prior written consent of the ARC, in strict compliance with the provisions of Article X of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; hedges, walls, dog runs, or animal pens, of any kind; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers, and similar structures.

(o) Landscaping. The removal alteration, or pruning of landscaping on the Common Area;

(p) Fences. Any placement, erection, or maintenance of any fence or fencing type barrier of any kind without the prior written consent of the ARC. Unless expressly allowed in writing by the Board of Directors or the ARC, no fence shall be placed, erected, allowed, or maintained upon any Unit closer to the street than the rear one-third of the residence located on the Unit. Notwithstanding the foregoing, Declarant shall have the right to erect fencing of any type, at any location, on any Unit during the period that such Unit is being used by Declarant as a model home. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

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

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

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

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

(d) Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community; and (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Unit (generally being the rear yard) at which an acceptable quality signal can be received in a manner consistent with the Community-Wide Standard and the Design Guidelines, unless such screening unreasonably interferes with the use of such Permitted Device.

(e) Motorized vehicles on pathways or unpaved Common Areas, except for public safety vehicles and vehicles authorized by the Board.