



## NOTICE REGARDING COVENANTS AND/OR RESTRICTIONS

The following Covenants and/or Restrictions are added as a courtesy only and are NOT WARRANTED by the property owner, their broker or agent as to completeness, accuracy, currency, or enforceability. Any interested buyer prospect is urged as part of their due diligence to contact the relevant Community Association or developer to determine for themselves what covenants and/or restrictions currently apply, how long they may remain in force, and if any changes or amendments may be currently under consideration. Additionally, or alternatively, one may wish to consider hiring an attorney to conduct this search for them and provide advice as needed.

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**  
**FOR**  
**HAMPTON STATION**

Prepared by and return to:  
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**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR HAMPTON STATION  
CHEROKEE COUNTY, GEORGIA**

**THIS DECLARATION OF COVENANTS AND RESTRICTIONS** for Hampton Station ("Declaration") is made on this 5th day of July, 2005 by BEAZER HOMES CORP., a Tennessee corporation (hereinafter called "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant owns all of that certain real property located in Land Lots 849, 850, 878, 879, 880, and 881 of the 3<sup>rd</sup> District, 2<sup>nd</sup> Section, Cherokee County, Georgia, which real property is more particularly described on Exhibit "A" attached hereto and made a part hereof (said property, and all real property hereafter submitted to this Declarant, is herein referred to as the "Property"); and

WHEREAS, Declarant owns or may acquire the Additional Property and submit the same to this Declaration; and

WHEREAS, Declarant intends to develop the Property (and any Additional Property) for residential purposes by the construction thereon of detached single family residences and associated amenities; and

WHEREAS, Declarant is desirous of developing and maintaining various amenities within the Community; of protecting the Owners of the Lots against any use thereof which will depreciate the value of the Community; of preserving, as far as practicable, the natural beauty of the Community; in general, of ensuring that improvements in the Community will meet the Community-Wide Standard; and, of establishing and providing for the enforcement of this Declaration during and after development; and

WHEREAS, Declarant deems it desirable to create the Association for the purpose of maintaining and administering portions of the Community and the improvements thereon and administering and enforcing the covenants and restrictions contained in this Declaration and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, every Owner of any Lot within the Community automatically, and by reason of such ownership and this Declaration, shall become a member of the Association and be subject to its Rules & Regulations and the assessments and charges made by the Association.

NOW, THEREFORE, Declarant hereby declares that the Property is hereby subjected to the provisions of this Declaration and shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration and the covenants, conditions, restrictions, easements, agreements, charges and liens hereinafter set forth. Every grantee of any interest in any Lot made subject to this Declaration, by acceptance of a deed or other conveyance of such interest, whether or not it shall be so expressed in any such deed or

other conveyance, whether or not such deed or other conveyance shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to all the terms and conditions thereof and shall be deemed to have assented to all of said terms and conditions of this Declaration.

## ARTICLE I DEFINITIONS

The following terms as used in this Declaration or in any amendment thereof (unless the context shall prohibit), shall have the meanings ascribed to them in this Article I, such definitions being cumulative of those set forth elsewhere herein.

**Section 1.1** “ACC” shall mean the Architectural Control Committee of the Association as further described in Article VII of this Declaration.

**Section 1.2** “Additional Property” shall mean the real property described in Exhibit “B” attached hereto and by this reference made a part hereof.

**Section 1.3.** “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of Hampton Station Homeowner’s Association, Inc., a nonprofit Georgia corporation, as the same may be amended from time to time.

**Section 1.4.** “Association” shall mean and refer to Hampton Station Homeowner’s Association, Inc., a nonprofit Georgia corporation, its successors and assigns.

**Section 1.5.** “Board” shall mean the board of directors of the Association which is the body responsible for administration of the Association, selected or approved pursuant to the By-Laws and generally serving the same role as the board of directors under Georgia corporate law.

**Section 1.6** “By-Laws” shall mean the By-Laws of Hampton Station Homeowners Association, Inc. attached hereto as “Exhibit “C””, as they may be amended from time to time.

**Section 1.7.** “Common Property” shall mean and refer to all real and personal property owned by the Association or in certain instances over which the Association has been granted an easement, for the common use and enjoyment of the Owners; a general description of the existing Common Property is attached as Exhibit “D” and made a part hereof.

**Section 1.8.** “Community” shall mean and refer to all property which is now or may be hereafter be made subject to the terms of this Declaration.

**Section 1.9.** “Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to this Declaration or the By-Laws. Such determination, however, must be consistent with

the Community-Wide Standard originally established by Declarant.

**Section 1.10.** "Declarant" shall mean and refer to Beazer Homes Corp., a Georgia corporation, its successors and assigns, provided such successor and/or assign shall acquire such property for the purposes of development or sale, and provided further, in the instrument or conveyance to any such successor and/or assign, such successor and/or assign is expressly designated as the "Declarant" hereunder. In addition, should any of the property within the Community become subject to the lien of a security instrument given by Declarant as security for the repayment of a construction or development loan, then all the rights, privileges and options herein reserved to "Declarant" shall inure to the benefit of the holder of such security instrument upon its becoming the owner of such property then subject thereto through whatever means, or the purchaser of all such property at a judicial or foreclosure sale made pursuant to any power of sale contained in such security instrument; and, further, all the rights, privileges and options reserved to "Declarant" may be transferred to the successor-in-title of any such acquirer of title to such property provided any such successor-in-title shall acquire for the purpose of sale or development all or some portion of such property, and provided further, in the instrument of conveyance to such successor-in-title, such successor-in-title is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor of such conveyance, shall be the "Declarant" hereunder at the time of such conveyance.

**Section 1.11.** "Declaration" shall mean and refer to the covenants, conditions and restrictions and all other provisions set forth herein in this entire document, as this document may be amended from time to time in accordance with the terms and provisions of Article XIII hereof.

**Section 1.12.** "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site as shown on a plat for any portion the Community, or amendments thereto, recorded in the land records of Cherokee County, Georgia.

**Section 1.13** "Members" shall mean the Class A Members and Class B Member of the Association, as described in Section 4.4 of this Declaration.

**Section 1.14.** "Mortgage" shall mean a deed to secure debt, security deed, mortgage or any other security instrument given to secure any Lot.

**Section 1.15.** "Mortgagee" shall mean and refer to the holder, guarantor or insurer of any security instrument given to secure any Lot.

**Section 1.16.** "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such person is a tenant or the Owner of said property.

**Section 1.17.** "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

**Section 1.18** "Person" shall mean any natural person, corporation, limited liability company, joint venture, partnership (general or limited), association, trust or other legal entity.

**Section 1.19.** "Plat" shall mean and refer to any final recorded plat of the Community or any phase of the Community.

**Section 1.20.** "Residence" means a structure and the Lot on which it is situated, which are intended for independent use and occupancy as a residence for a single family. A structure and the Lot upon which it is situated shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a prerequisite to the occupancy of such Residence and until the Lot and structure shall have been conveyed to a party other than the builder thereof.

**Section 1.21.** "Rules & Regulations" means the Rules and Regulations for the Community as passed by the Association, as the same may be amended from time to time. The initial Rules & Regulations are attached hereto as Exhibit "E" and by this reference made a part hereof.

**Section 1.22.** "Structure" shall mean and refer to:

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

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

(iii) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) above applies to such change.

## ARTICLE II PROPERTY AND PROPERTY RIGHTS

**Section 2.1. Property Hereby Subjected To This Declaration.** By the recording of this Declaration, the Property is hereby subject to the covenants and restrictions set forth in this Declaration, and the Property shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration.

**Section 2.2. Rights and Burdens.** Every person who is a record owner of a fee or

undivided fee interest in any Lot does, by acceptance of a deed other conveyance thereto, and by acceptance of such ownership, and by taking record title to such Lot, agree to all the terms and provisions of this Declaration. Each Lot is subject to all the burdens, and enjoys all the benefits, as described herein and made applicable hereunder.

**Section 2.3. Common Property.** Declarant may transfer or convey to the Association any real or personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and such property shall thereafter be Common Property to be maintained by the Association for the benefit of all its Members. Any such conveyance shall be conveyed to the Association by limited warranty deed or limited warranty bill of sale free of debt encumbrance. Any real property conveyed to the Association shall be subject to the rights and easements set forth in this Declaration, irrespective of whether the deed of conveyance shall make specific reference to such rights and easements.

Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Community owned by Declarant and designated as Common Property or designated for public use shall be reserved to Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority, by a properly recorded deed in the applicable county.

**The Property is subject to that certain Easement Agreement by and among Beazer Homes Corp. and Atlanta Gas Light Company (“AGLC”), made and entered into on the 5<sup>th</sup> day of October, 2004, and recorded on October 12, 2004 in Deed Book 7429, Pages 193-197, Cherokee County, Georgia records (the “Easement Agreement”). The aforesaid easement runs in perpetuity in favor of the AGLC in order to preserve the exclusive right of the AGLC to construct, install, lay, maintain, inspect, test, operate, repair, replace, alter, renew, rebuild, reconstruct, upgrade, enhance, change, patrol, add and remove in, upon, under and above the Easement Area pipes, mains, equipment, cables, lines, conduits, valves, regulators, meters, anodes, fittings, markers, cathodic protection facilities, regulator stations, and pipeline communication systems, of every nature and description, together with such machinery, apparatus, equipment, fixtures, improvements, appurtenances and facilities related thereto or as AGLC in its sole discretion deems necessary or desirable and to perform any additional activities deemed necessary or desirable by AGLC, in its sole discretion. The Easement Agreement also grants the AGLC a non-exclusive perpetual easement from time to time of unrestricted and free access, ingress and egress to and from the easement area on, over and through the property. Further, the aforesaid agreement grants the AGLC a non-exclusive perpetual easement from time to time to go on, over and through the property and the easement area to inspect and survey the property and easement area and the right to excavate the easement area. Further, the aforesaid easement specifically provides that any activity on, or use of, the Property inconsistent with the purposes of the Easement Agreement, whether building, grading, excavating, digging, filling, etc., is prohibited. The easement further states that any use or activity by any other party that is inconsistent with the permitted uses of the AGLC is prohibited.**

**Section 2.4. Owner's Use and Enjoyment.** Subject to the provisions herein, every member of the Association shall have a non-exclusive right and easement of use and enjoyment in and to the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section is subject to suspension by the Association as provided in Section 2.4 (E) and Section 4.6, and subject to the following:

(A) the right of the Association to adopt, publish and enforce Rules & Regulations governing the use, operation and maintenance of the Common Property;

(B) the right of the Association to borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property, including Common Property and revenues from assessments, user fees, and other sources; provided, however, that during the period when Declarant has the right to appoint members of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by Declarant (for so long as Declarant is a Member) and a two-thirds (2/3) vote of the Members; and further provided that the right to encumber Common Property shall be subject to the provisions of Section 8.2(A). The lien and encumbrance of any Mortgage, however, shall be subject and subordinate to all rights, interest, easements and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any security interest, regardless of when executed, given by the Declarant or any Owner;

(C) the right of the Association to dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by Declarant (for so long as Declarant is a Member) and by a two-thirds (2/3) vote of the Members, cease to be subject to this Declaration while held by any such municipality or other governmental body, agency or authority;

(D) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility which may be hereafter situated or constructed upon the Common Property and to impose reasonable limits (and charges) on the number of guests who may use such recreational facilities;

(E) the right of the Association to suspend, pursuant to Section 4.6, the voting rights of any Member and the rights of enjoyment granted or permitted by this Section, (i) for any period during which any assessment of the Association against the Owner's Lot remains unpaid, and (ii) for any infraction of this Declaration, the By-Laws of the Association or the Rules & Regulations



governing the use, operation and maintenance of the Common Property for the duration of the infraction;

(F) the right of the Association to grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency, or authority, to any quasi-public agency, or to any utility company or cable television systems;

(G) the right of the Association to sell, lease or otherwise convey all or any part of its properties and interests therein, if such sale, lease or conveyance is approved by Declarant (for so long as Declarant is a Member) and a two-thirds, (2/3) vote of the Members.

(H) the right of the Association to enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and

(I) the right of the Association to maintain and keep in good repair the Common Property to the extent that such Common Property is not otherwise maintained by the applicable governmental authority.

**Section 2.5. Delegation of Use.** Any Owner may delegate to the members of his family or his tenants who reside in a Residence, in accordance with the By-Laws, his right to use and enjoy the Common Property.

### ARTICLE III EASEMENTS

**Section 3.1. Easements Reserved for Declarant.** Declarant hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, upon, over and across any portion of the Community so long as Declarant owns any Lot or Additional Property primarily for the purpose of sale:

(A) for the erection, installation, construction and maintenance of wires, lines, and conduits, and any attachments related to the same, in connection with the transmission of electricity, gas, water, telephone, and other utilities;

(B) for the installation, construction, and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility function;

(C) for the use by Declarant and its authorized agents (including, without limitation, real estate brokers and agents) use of sales offices, model homes and parking spaces; and

(D) for the erection and maintenance of signs in connection with its efforts to market the Lots and Residences;

(E) for the maintenance of such other facilities, equipment and signs as in the sole

discretion of Declarant may be reasonably required, convenient or incidental to the completion, improvements and sale of the Lots and Residences, including, but not limited to, the installation, construction, landscaping and maintenance of all entry features;

(F) for ingress and egress by vehicular and pedestrian traffic over such drives, roadways, walkways and paths now or hereafter located on the Community; and

(G) for continual control over any security or entry gate for the Community.

**Section 3.2. Easement for Maintenance.** The Association shall have a general easement for maintaining the Community in accordance with the provisions of Article VI hereof. The Association shall maintain and keep the Common Property in good repair. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights of way which were installed and maintained by Declarant to the extent permitted by the applicable governmental authority, and shall maintain all entry features, fencing, walls, lighting and irrigation systems, if any, which were installed by Declarant, and shall maintain all storm water and detention facilities serving the Community until such facilities are dedicated to and accepted for maintenance purposes by the applicable governmental authority. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into easements and agreements to share costs regarding such property where the Board, in its reasonable opinion, has determined that this would benefit the Owners.

**Section 3.3. General Easement for the Association.** The Association, in addition to the rights of the Association pursuant to Section 3.2 hereof, shall have a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any property within the Community or any portion thereof in the performance of their respective duties and responsibilities, including those set forth in Sections 6.1 and 6.4 hereof. In addition, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety reasons, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. The right to enter shall also include the right of the Board to cure any condition which may increase the possibility of fire, slope erosion, or other hazard in the event an Owner or resident fails or refuses to cure the condition upon request by the Board. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner.

**Section 3.4. Easements to Serve Additional Property.** Declarant hereby reserves for itself and its agents, representatives, employees, successors, assigns, licensees and mortgagees an

easement over the Common Property for the purpose of use, access and development of the Additional Property, whether or not the Additional Property is submitted to this Declaration. This easement includes, without limitation, (i) a right of pedestrian and vehicular ingress and egress over all roads, streets, alleys and paths in the Common Property and (ii) the right to connect, install, maintain, repair and replace utility, cable television, broadband and other underground lines in the Common Property, and (iii) the right to connect roads, streets, alleys and paths in the Common Property with roads, streets, alleys and paths in the Additional Property, including the right to construct, repair and maintain such roads, streets, alleys and paths.

**Section 3.5. Other Easements.** The Property shall be subject to all utility, access, conservation or other types of easements, borders, buffers and the like which are shown and depicted on the Plats as affecting and burdening the Property.

#### **ARTICLE IV THE ASSOCIATION**

**Section 4.1. The Association.** The name of the homeowners' association shall be Hampton Station Homeowner's Association, Inc. Except to the extent otherwise required by the provisions of the Official Code of Georgia relating to nonprofit corporations, this Declaration, the Articles of Incorporation and By-Laws of the Association, the powers herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Owners. The Association is and shall be responsible for the ownership, management and operation of the Common Property, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as the Board shall deem to be in the best interests of the members of the Association.

**Section 4.2. Duties and Powers.** The duties and powers of the Association shall be those set forth in the Official Code of Georgia relating to nonprofit corporations and to this Declaration, the Articles of Incorporation and By-Laws, together with those reasonably implied to effect the purposes of the Association; provided however, that if there are conflicts or inconsistencies between the Official Code of Georgia, this Declaration, the By-Laws or the Articles of Incorporation, the Official Code of Georgia, this Declaration, the By-Laws and then the Articles of Incorporation, in that order, shall prevail, and each Owner, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**Section 4.3. Membership.** Every Owner shall be deemed a mandatory member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot, and ownership of any Lot shall be the sole qualification for such membership. In the event that fee title to a Lot is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee. The

foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot. The right and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a Member or a Member's spouse; but, in no event shall more than one vote be cast or more than one office held for each Lot owned. If a Member is an entity, the Members shall disclose in writing to the Association who is entitled to vote on behalf of such Member (in the event of conflicting instructions, such Member's vote will not be counted). When more than one person holds an interest in a Lot, the vote for such Lot shall be exercised as the Owners of such Lot shall themselves determine. The vote appurtenant to any Lot shall be suspended in the event that more than one person seeks to exercise it.

**Section 4.4. Classes of Membership; Voting Rights.** The Association shall have two (2) classes of voting membership which shall be known as Class A Members and the Class B Member:

(A) Class A. With the exception of Declarant, every Owner shall be a Class A Member of the Association; provided, however, that any person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of a debt or obligation shall not be a Class A Member solely on account of such interest. Until such time as the Class A Members shall be entitled to full voting privileges, as hereinafter specified, the Class A Membership shall be entitled to vote only in regard to the following matters: (a) any proposal of merger, consolidation or dissolution of the Association; (b) any proposal to transfer or encumber any portion of the Property owned by the Association; (c) any proposal pursuant to Section 13.3 of this Declaration to amend this Declaration; (d) any proposal to modify or amend the Articles of Incorporation or the By-Laws and (e) any other matter for which it is herein specifically provided, or for which it is provided by law, that approval of each and every class of membership of the Association is required. Except in regard to the foregoing matters, the Class A membership shall be a non-voting membership until such time as the Class B membership shall terminate, at which time the Class A membership shall be the sole class of membership and shall be entitled to full voting privileges. When entitled to vote, Class A Members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership by Section 4.3.

(B) Class B. The Class B Member shall be Declarant or its nominee or nominees, and shall include every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who shall obtain any Class B membership by assignment from Declarant which specifically assigns the rights of Class B membership and shall be entitled to three (3) votes for each Lot owned; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters and in all events. Class B membership shall lapse and be converted to Class A membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 4.10 below. Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) thirty (30) days following the date upon which the last Lot in the Community shall have been conveyed by Declarant to an Owner, other than an affiliate of Declarant; or

(ii) upon the surrender of the Class B membership by the then holder thereof for cancellation on the books of the Association. Upon lapse or surrender of any of the Class B membership as provided for in this paragraph, Declarant or its successor in interest shall thereafter remain a Class A Member of the Association as to each and every Lot in which Declarant then holds the interest otherwise required for such Class A membership.

From and after the date at which the Class B membership automatically terminates and ceases to exist, such membership shall not be renewed or reinstated.

**Section 4.5. Board.** The affairs of the Association shall be managed by a Board. The number of directors and the method of election of directors shall be as set forth in the By-Laws.

**Section 4.6. Suspension of Membership Rights.** The Board may suspend the voting rights of any Member, including the right to vote and use of the Common Property, who (a) shall be subjected to the "Right of Abatement", as defined in Section 12.2, by reason of having failed to take reasonable steps to remedy a violation or breach of the restrictions of the ACC Standards of the ACC within thirty (30) days after having received notice of the same pursuant to the provisions of Article VII, (b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article V hereof; or (c) shall be in violation of any of the Rules & Regulations of the Association relating to the operation or maintenance of the Common Property. Such suspension shall be for the balance of the period in which said Member shall remain in violation, breach or default. Any such suspension shall not affect such Member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Member's property in favor of the Association.

**Section 4.7. Termination of Membership.** Membership shall cease only when a person ceases to be an Owner.

**Section 4.8. Association Acts Through Its Board.** Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board, unless specifically stated in this Declaration, the Articles of Incorporation or the By-Laws with respect to such action, inaction or approval that the members of the Association must vote. No member of the Board or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B Member) shall be personally liable to any Owner for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

**Section 4.9. Professional Management.** The Association may, but shall not be obligated to, obtain and pay for the services of any person or other entity to manage the affairs of

the Association, or any part thereof, and may enter into such agreements for the management of the Common Property as the Board deems to be in the interest of the Association. Notwithstanding, any agreement for professional management of the Association must provide for a term not to exceed one (1) year and termination by the Association, without cause and without payment of any penalty or termination fee, upon not more than ninety (90) days written notice, and such provisions are hereby incorporated into any such management agreement, regardless of whether the same is expressly set forth therein. For so long as there is a Class B Member of the Association, the Association will not be bound directly or indirectly to either contracts or leases unless there is a right of termination of any such contract or lease, without cause, at any time after there ceases to be a Class B Member, upon not more than ninety (90) days notice to the other party.

**Section 4.10. Control by Declarant.**

(A) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation or in the By-Laws, Declarant shall have the right to appoint and remove all of the members of the Board and any officer and officers of the Association until such time as the first to occur of the following events:

- (1) thirty (30) days following the date upon which the last Lot in the Community shall have been conveyed by Declarant to an Owner, other than an affiliate of Declarant; or
- (2) the surrender by Declarant of the authority to appoint and remove the directors and officers of the Association by an express amendment to this Declaration executed by Declarant.

Every Owner and grantee of any interest in the Community, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have and hereby vests in Declarant the authority to appoint and remove directors and officers of the Association in accordance with the provisions of this Section.

(B) Upon the expiration of Declarant's right to appoint and remove directors and officers of the Association pursuant to this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect new Members to the Board who shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession. The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE V ASSESSMENTS

**Section 5.1 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the Community, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the restrictions contained in this Declaration, the enforcement of the ACC Standards (as defined in Section 7.3 hereof), the payment of operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association.

**Section 5.2. Creation of Lien.** Each Lot is hereby made subject to a lien and permanent charge in favor of the Association for annual assessments or charges and special assessments or charges. Each Lot hereafter made subject to this Declaration shall automatically be subjected to said lien and permanent charge at the time such Lot is made subject to this Declaration. Such annual and special assessments shall be fixed, established and collected as hereinafter provided. There shall be an equitable charge and a continuing lien upon the Lot against which each assessment is made. Such permanent charge and lien shall bind such Lot and the successors in interest in such Lot while such successor holds an interest therein, unless otherwise provided herein. The lien for assessments shall also include, in addition to the annual and special assessments as described herein, the following:

- (A) late charges as may be assessed in accordance with O.C.G.A. § 44-3-232(b)(1);
- (B) simple interest at the rate of ten percent (10%) per annum; and
- (C) costs of collection, including court costs, with expenses required for the protection and preservation of the Lot, and reasonable attorney fees actually incurred.

The Association may enforce the lien created hereby in accordance with the provisions of Section 5.14 hereof.

**Section 5.3. Personal Obligation of Assessments.** Each Owner covenants and agrees to pay to the Association annual assessments or charges and special assessments or charges, such annual and special assessments to be fixed, established and collected from time to time as hereinafter provided. Any person who was the Owner of any Lot subject to assessment by the Association at a time when any assessment came due with respect to such Lot shall be personally obligated to pay such assessment, together with all other costs as allowed by Georgia law. The personal obligation hereby created may be enforced by the Association in any appropriate proceeding in law or in equity.

**Section 5.4. Priority of Assessment Liens.** The lien of the assessments as described in Section 5.2 hereof shall be superior to all other liens and encumbrances on such Lot except only for:

- (A) the liens of ad valorem taxes,
- (B) the liens of any first priority Mortgage covering the Lot and the lien of any Mortgage recorded prior to the recording of this Declaration, and
- (C) the lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot.

**Section 5.5. Annual Assessments.** Every Member shall pay an annual assessment to the Association as follows:

(A) By All Owners of Lots Except Declarant. Subject to the provisions of Section 5.10 hereof, all Owners (other than Declarant) shall pay an initial annual assessment as may be determined by the Board, subject to any future adjustments as determined by the Association in accordance with the provisions of Section 5.6 hereof. At the option of Declarant or the Board, as the case may be, the assessments may be collected quarterly, semi-annually or annually.

(B) By Declarant. For each Lot owned by Declarant which is made subject to this Declaration, Declarant shall be exempt from paying any assessment until such time as (i) the Lot is occupied, or (ii) the Lot is sold to a party other than a builder.

**Section 5.6. Adjusted Annual Assessments.** The annual assessment may be increased for the second fiscal year of operation (January 2006 to December 2006) by not more than twenty-five per cent (25%) above the annual assessment for the first fiscal year of operation, and for each subsequent year, the increase shall not be more than ten per cent (10%) above the annual assessment for the previous year without a two-thirds (2/3) vote of the Members. The Board may fix the annual assessment at an amount not in excess of the maximum.

**Section 5.7. Special Assessments.** In addition to the annual assessment authorized by this Article V, the Association may levy, in any assessment year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any assessment year without the approval of the Members, if such special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of a two-thirds (2/3) vote of the Members of the Association.

**Section 5.8. Capital Contribution.** In addition to the annual assessments provided hereinabove, at the closing of the initial sale of each Lot to a party other than the builder thereof, the purchaser thereof shall pay to the Association an amount determined by Declarant as an initial working capital contribution with respect to each Lot, which is not refundable.



**Section 5.9. Date of Commencement of Assessments; Due Dates.** Unless the date is changed by the Board, the annual assessment shall commence as of the date of closing of a Lot to an Owner other than builder, and shall be prorated for the calendar year of closing. The annual assessment shall commence of January 1 of each year and may be paid either annually, semi-annually, or quarterly, as may be determined by the Board. The due date of any special assessment shall be fixed in the resolution authorizing such assessment. The annual assessment shall commence in accordance with the provisions as set forth in Section 5.6 hereinabove.

(a) The Board shall establish the annual assessment for each assessment year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article. The annual assessment shall be due and payable on January 1 of each year (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repairs and replacements of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all future repairs and replacements of the Common Property, it being intended that a portion of the costs will be covered by special assessments. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the assessment year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Article.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members at which the Board shall propose taking action pursuant to Section 5.5 or Section 5.7. Such written notice shall specify under which Section or Sections the Board will propose action.

**Section 5.10. Contribution by Declarant.** For so long as Declarant has the authority to appoint and remove directors and officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association, and the sum of annual, special, and specific assessments collected by the Association in any assessment year, and such advances may be deemed to be loans to the Association and may be evidenced by promissory notes from the Association to Declarant, which shall be due and payable upon demand, with interest at the rate of twelve (12%) percent per annum after demand.

**Section 5.11. Certificate.** The Treasurer or the manager of the Association shall, within five (5) days after written request therefore and upon payment of such fee as is from time to time determined by the Board, furnish to any Owner, a certificate in writing setting forth whether the assessments for which said Owner is responsible, have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges. A fee of \$10.00 (or greater if permitted by Georgia law) may be assessed for the

issuance of such certificates. Such certificate shall be conclusive evidence against all but such Owner of payment of any assessment therein stated to have been paid.

**Section 5.12. Individual Assessments.** Any expense of the Association occasioned by the conduct of some, but not all, of the Owners or by the family, tenants, agents, guests, or invitee of any Owner shall be specifically assessed against such Owners and their respective Lots. The individual assessments provided for in this Section shall be levied by the Board and the amount and due date of such assessment shall be as specified by the Board.

**Section 5.13. Subordination of the Charge and Lien to Mortgages.** The lien and permanent charge of all assessments authorized herein (including annual and special) with respect to any Lot is hereby made subordinate to the lien of any Mortgage placed on such Lot and to the lien of any mortgage recorded prior to the recording of this Declaration. Such subordination is merely a subordination and shall not relieve the Owner of the mortgaged property of his personal obligation to pay all assessments coming due at a time when he or she owns such property.

**Section 5.14. Effect of Non-Payment; Remedies of the Association.** Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount to be not in excess of the greater of \$25.00 or ten percent (10%) of the amount of each assessment or installment thereof not paid when due, and, in addition thereto, shall also commence to accrue simple interest at the rate of ten percent (10%) per annum. A lien and equitable charge as herein provided for each assessment shall attach simultaneously as the same shall become due and payable. The Association, prior to the institution of any action, judgment and/or foreclosure against the Owner and/or the Lot, shall first give to the Owner not less than ten (10) days written notice by certified mail, return receipt requested, at both the address of the Lot and at any other address or addresses which the Owner may have designated to the Association in writing. The notice shall specify the amount of the assessments then due and payable together with authorized late charges and interest accrued thereon. Thereafter, the lien may be foreclosed by the Association by an action, judgment and foreclosure in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including, by way of illustration but not limitation, abandonment of his/her Lot or by renunciation of membership in the Association.

**Section 5.15. Approval by Declarant.** Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint and remove officers and directors of the Association.

**Section 5.16. Specific Assessments.** The Board shall have the power to specifically assess Lots that have been sold to Owners for residential occupancy pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future

with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners of such Lots for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association, as provided herein:

(a) expenses of the Association which benefit less than all of the Lots, which may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received;

(b) expenses incurred by the Association pursuant to Article VI hereof; and

(c) reasonable fines as may be imposed in accordance with the terms of this Declaration and the By-Laws.

**Section 5.17. Uniform Rate of Assessment.** Except as expressly set forth in this Declaration, both annual and special assessments must be fixed at a uniform rate for all Residences.

**Section 5.18. Accumulation of Funds Permitted.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the annual assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purpose.

## ARTICLE VI MAINTENANCE

**Section 6.1. Association's Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair or, replacement, subject to any insurance then in effect, of all landscaping and improvements, if any, situated on the Common Property. The Association shall maintain all entry features for the Community and street signs originally installed by Declarant, if any. There is hereby reserved to the Association a blanket easement upon, across, over, and under all property within the Community for access, ingress and egress as necessary or convenient to permit the Association to perform such maintenance. The Association's responsibility with respect to the Common Property shall be deemed to include maintenance, repair and replacement of:

(A) any wall or fence, if any, surrounding the Property;

(B) any and all roads, driveways, walks, parking areas, and other improvements situated within the Common Property, including any recreational facilities located thereon;

- (C) any utility lines, pipes, plumbing, wires, conduits and systems which are part of the Common Property and serve any part of the Community;
- (D) any entryway treatment, entryway gate, entryway signs and entryway landscaping for the Community;
- (E) all entryway lights, if any;
- (F) all the irrigation facilities, if any, serving the entryway landscaping for the Property;
- (G) any detention pond or facility located on the Property, to the extent that maintenance and repair of same is not assumed by the applicable governmental authority;
- (H) any recreational facilities built for the common use of all Owners, including, but not limited to, any pool, tennis courts, cabanas, and/or playground equipment as may be constructed on any of the Common Property;
- (I) any lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Property; and
- (J) maintenance and upkeep of the open spaces as designated on the plat(s) of the Community.

**Section 6.2. Liability of Association.** The Association shall not be liable for injury or damage to any person or property caused by the elements or by any Owner or any other person. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

**Section 6.3. Owner's Responsibility.** Except as provided in Section 6.1 above, all maintenance of each Lot and all structures, parking areas, landscaping and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration.

**Section 6.4. Failure of Maintenance.** If the Board determines that (a) any Owner has failed or refused to properly discharge any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder; or (b) that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the

Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement, at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

**Section 6.5. Safety and Security.** Each Owner and Occupant and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. 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 and Occupant acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Residence that the Association, the Board 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 Residences and the contents of Residences, resulting from acts of third parties.

## ARTICLE VII ARCHITECTURAL CONTROL

**Section 7.1. Purpose.** In order to preserve the natural setting and beauty of the Community, to establish and preserve a harmonious and aesthetically pleasing design for the Community, and to protect and promote the value of the Property, the Lots and all improvements located thereon or therein shall be subject to the provisions set forth in this Article VII. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without limitation, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

**Section 7.2. Architectural Control Committee.** The ACC shall be comprised of not less than three (3) nor more than five (5) persons, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, and notwithstanding the turnover of the Association to the Class A Members, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the sale by Declarant of all Lots within the Community (including Lots on the Additional Property that have not yet been submitted to this Declaration). Thereafter (or sooner if Declarant so elects), the Board shall appoint a new ACC, all of whom shall be Owners and who may or may not be members of the Board. The regular term of office of each member of the ACC shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The ACC shall elect a chairman and he, or in his absence the vice-chairman, shall be the presiding officer at its meetings. The ACC shall meet as may be required, as well as upon call of the chairman. A majority of the members of the ACC shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ACC shall constitute the action of the ACC on any matter before it. The ACC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist said the ACC in performing its functions set forth herein.

**Section 7.3. Permitted Improvements; ACC Standards.** No Structure of any nature shall be constructed, altered, added to and/or maintained upon any part of the Property, except:

- (i) those Structures and other improvements constructed by Declarant;
- (ii) those Structures or improvements as are approved by the ACC in accordance with this Article; and
- (iii) those Structures and other improvements which pursuant to the Declaration do not require the consent of the ACC.

The ACC is hereby authorized, but not obligated, to promulgate from time to time written architectural standards, policies and guidelines (the "ACC Standards") governing the construction, location, landscaping and design of Structures and other improvements, the contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to this Article. Any ACC Standards published shall be binding and enforceable on all Owners with respect to all Structures and other improvements in the Community requiring the approval of the ACC.

**Section 7.4. Architectural Approval.** No Structure shall be commenced, constructed, placed, moved onto, or maintained by any Owner other than Declarant, nor shall any exterior addition to or change or alteration to any Structure be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, materials and location of same shall have been submitted to and approved in writing by the ACC. One copy of

such plans, specifications and related data so submitted shall be retained in the records of the ACC and the other copy shall be returned to the Owner marked "approved", "approved as noted" or "not approved" or words of similar effect. The ACC shall have the right, but not the obligation, to establish a fee sufficient to cover the expense of reviewing submissions and to compensate any consulting architects, landscape architects, urban designers, inspectors or attorneys retained in accordance with the terms hereof. As long as the members of the ACC are comprised of all the persons named by Declarant in Section 7.2 hereof, there shall be no charge by the ACC. The foregoing notwithstanding, an Owner may make any interior improvements and alterations within his Residence that does not affect the Residence's exterior appearance without the necessity of approval or review by the ACC. The ACC shall have the sole discretion to determine whether the plans and specifications and other data submitted for approval are acceptable to the Association. Representatives of the ACC shall have the right during reasonable hours to enter upon and inspect any Lot with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved and are being complied with. In the event that the ACC shall determine that such plans have not been approved or are not being complied with, the Association shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with the approved plans and specifications.

In the event that the ACC fails to disapprove any plans or specifications within thirty (30) days after such plans shall have been submitted, such plans will be deemed to have been approved, provided that the proposed improvements are generally in harmony with the scheme of the Community set forth in this Declaration. Upon approval of plans and specifications, no further approval under this Article shall be required with respect thereto, unless such construction contemplated in the plans has not been substantially commenced within six (6) months of the approval of the plans and specifications therefore and completed within twelve (12) months of the approval, or unless the plans and specifications are materially altered or changed. The ACC may refuse to approve any plans and specifications upon any grounds consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

**Section 7.5. Approval not a Guarantee.** No approval of plans and specifications and no publication of ACC Standards (if published by the ACC) shall be construed as representing or implying that such plans, specifications or ACC Standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Structure built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the ACC shall be responsible or liable on any defects in any plans or specifications submitted, revised or approved pursuant to terms of this Article, any loss or damages to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances, laws, codes or regulations, nor any defects in construction undertaken by pursuant to such plans and specifications. Every Owner, by submission of such plans and specifications to the ACC as required by this Article, hereby (i) represents and warrants that such plans and specifications comply with all governmental ordinances, laws, regulations and codes, (ii) releases Declarant, the Association and any and all members of the ACC from any liability, claim or damage related to or arising

from any proposed structure, and (iii) agrees to hold harmless and to defend Declarant, the Association and any and all members of the ACC from any such liability, claim and/or damage resulting from the ACC approval or rejection of said plans and specifications, including, without limitation, Attorney's fees and court costs.

**Section 7.6. Inspection Rights.** Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times, enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of the ACC Standards and this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

**Section 7.7. Violations.** If any Structure shall be erected, placed, maintained or altered upon any Lot other than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association, and the Board shall take appropriate measures to correct the violation; the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Article XII hereof.

**Section 7.8. Building Restrictions.** Each Owner submitting plans and specifications to the ACC shall be responsible for ensuring that all Structures and other improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building laws, codes, regulations, ordinances and restrictions.

**Section 7.9. Declarant.** The provisions contained in this Article as well as all other architectural provisions in this Declaration shall not apply to Declarant. In addition said provisions shall not apply to any builder who acquires a Lot from the Declarant for the purpose of constructing a dwelling thereon, provided however, any such builder must first submit (in a format satisfactory to Declarant within Declarant's sole discretion) plans and specifications to Declarant and Declarant shall have approved the same. This section 7.9 may not be amended without the prior written consent of Declarant.

## ARTICLE VIII MORTGAGE PROVISIONS

**Section 8.1. Rights of First Mortgagees.** Each holder of a first priority Mortgage ("First Mortgagee") encumbering a Lot shall upon request (a) be entitled to written notice from the Association of any default by an Owner in the performance of his obligations under the



Declaration which is not cured within thirty (30) days; (b) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (c) be furnished copies of any financial reports made to the Owners (if requested in writing); (d) be entitled to inspect the financial books and records of the Association and current copies of this Declaration, the By-Laws and other rules of the Association during reasonable business hours; (e) be entitled to notice of any material modification of any insurance policy or fidelity policy maintained by the Association; (f) be entitled to written notice of any condemnation loss or any casualty loss which affects a material portion of the Property; and (g) be entitled to vote on all matters which would require the consent of a First Mortgagee or a specified percentage of Mortgagees; provided, however, that such Mortgagee shall first file with the Association a written request that such notices and copies of financial reports be sent to a named agent or representative of the Mortgagee at an address as stated in such notice.

**Section 8.2. Consent of First Mortgagees.** In addition to the rights of a Mortgagee pursuant to Section 13.2 hereof, and notwithstanding any provisions to the contrary contained herein, unless at least seventy-five (75%) per cent of the First Mortgagees have consented in writing, Declarant and the Association shall not do any of the following:

(A) by act or omission seek to abandon, subdivide, encumber, sell or transfer the Common Property. The granting of easement for public utilities or for other public purposes consistent with the intended use of the Common Property by the Association shall not be deemed a transfer within the meaning of this clause;

(B) change the method of determining the assessments, dues or other charges which may be levied against an Owner;

(C) use hazard insurance proceeds for losses to any of the Common Property for other than the repair, replacement or reconstruction of such Common Property; or

(D) terminate professional management and assume self-management of the Association.

**Section 8.3. Priority of First Mortgages.** No provision of this Declaration shall be construed to grant to any Owner or any other party any priority over any rights of First Mortgagees pursuant to their first priority Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or the Common Property or any portions thereof.

**Section 8.4. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 8.5. Taxes, Insurance Premiums, Etc.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Property, and

First Mortgagees making such payments shall be repaid any such payments immediately upon demand from the Association.

**Section 8.6. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## ARTICLE IX USE RESTRICTIONS AND RULES

**Section 9.1. General.** In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be in accordance with, the provisions set forth in this Article, which may be amended only in the manner provided in Article XIII, hereof regarding amendment of this Declaration. The Board may, from time to time, without the consent of the Members, promulgate, modify or expand upon the use restrictions set forth herein by adopting reasonable Rules & Regulations applicable to the Lots and Common Property. Such regulations and use restrictions shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, cancelled, or modified in a regular or special meeting of the total Association vote.

**Section 9.2. Single Family Residential Use.** Except for the use rights reserved by Declarant, all Lots shall be restricted exclusively to single family residential use only and no trade or business of any kind may be carried on therein. As used herein, "single family" shall not require a relationship of blood or marriage and shall include roommate relationships, but shall specifically exclude boarding house, hotel or transient uses. Occupancy of four or more persons who are not related by blood or marriage shall be deemed to be an occupancy for non-single family use and shall be expressly prohibited hereby. No Lot shall be used for any commercial, business or professional purpose, except that an Owner may use a portion of the Lot to "do work at home", as long as the Owner does not create regular customer, client, or employee traffic or otherwise create a nuisance and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Lot. The use of any Lot may not violate any city or county zoning regulations or ordinances.

**Section 9.3. Use of Common Property.** The Common Property shall be used only by the Owners and their agents, servants, tenants, family members, invitees and licensees for such purposes as authorized by this Declaration and/or by the Board.

**Section 9.4. Use by Declarant.** Notwithstanding the provisions of Section 9.2 hereof, during the period of sale and construction, Declarant shall be entitled to and have an easement for access to, ingress to and egress from the Property as may be required for purposes of the sale of the Lots, and the construction, installations, improvements and maintenance of components of the Property. Any unsold or unoccupied Lot owned by Declarant may be used as a model and Declarant may (i) use one or more of such unsold or unoccupied Lot as a sales office, (ii) do any

and all acts which are reasonable and necessary to promote and sell the Lots, and (iii) maintain any and all signs within the Lot and on a portion of the Common Property to aid in the sale of such Lot or any other Lot within the Community.

**Section 9.5. Prohibit Activities.** Each Owner of any Lot, his family, tenants, guests and invitees shall:

(A) refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other residents of any other Lot;

(B) not create any nuisances on, upon or the Common Property or within any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot; and

(C) refrain from the pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions in any part of the Community.

**Section 9.6. Occupants Bound.** All provisions of the Declaration and of the Rules & Regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide sanctions against Owners shall also apply to all Occupants of any Lot even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

**Section 9.7. Pets.** No Lot shall be used for the keeping or breeding of livestock, animals or poultry of any kind, except that a reasonable number of household pets may be kept, provided that they are neither kept for breeding nor maintained for any commercial purpose, and provided that none of such pets are permitted to be a source of annoyance to any other resident or residents of any other Lot. No known vicious animal shall be kept on any Lot. All pets shall, at all times when they are outside of a Lot, be confined on a leash. Owners shall be immediately responsible for the proper clean up and disposal of all waste created by their animals.

**Section 9.8. Window Air-Conditioners.** No air-conditioner shall be installed in any window of any Residence, nor shall any air-conditioner be installed on any Residence so that the same protrudes through any exterior wall of such Residence.

**Section 9.9. Pools.** Pools, of any sort whatsoever, other than a pool, if any built as part of the amenities package by the Declarant, shall not be permitted without prior approval of the ACC. No permanent above-ground pools shall be permitted.

**Section 9.10. Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes B-B guns, pellet guns, sling shots and firearms of all types.

**Section 9.11. Solar Devices.** No artificial or man-made device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed or maintained upon any portion of the Lot, without prior written consent of the ACC.

**Section 9.12 Garbage Cans, Woodpiles, Etc.** All garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the streets. All rubbish, trash and garbage shall regularly be removed from Lot and shall not be allowed to accumulate thereon. Declarant, however, expressly reserves the right to dump and bury rocks on the property within the Community as needed for efficient construction and to allow Declarants and builders within the Community to do so. No organic material shall be buried anywhere in the Community.

**Section 9.13. Parking.** Except for construction vehicles necessitated by Declarant's activities, no commercial trucks or vehicles may be stored or parked on any portion of the Community, except for those vehicles making deliveries or providing services to the Owners. No house trailers, mobile homes, campers, inhabitable vehicles of any kind, school buses, trailers or vehicles that have been incapacitated for over 48 hours may be stored or parked on any portion of the Community unless the Board has provided a designated area for such parking. An owner of vehicle shall be responsible for moving a vehicle within twenty-four hours after receiving notice from the Association to remove said vehicle.

**Section 9.14. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or re-channel the drainage flows after the location and installation of drainage swales, storm sewers, or storm drains. Declarant reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised to reasonably minimize interference with the quiet enjoyment of any affected property. Reasonable steps shall be taken to protect affected property and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 9.15. Sight Distance at Intersections.** All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

**Section 9.16. Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Association. Declarant, however, hereby expressly reserves the right to re-plat any Lot(s) or other property in the Community. Any such division, boundary line change, or re-platting shall not be in violation of the applicable subdivision and zoning regulations.

**Section 9.17. Entry Features and Street Signs.** Owners shall not alter, remove or add improvements to any entry features or street signs constructed by Declarant on any Lot or any part of any easement area associated therewith without the prior written consent of the ACC.

**Section 9.18. Leasing.** No Owner may lease his Residence other than for residential purposes. Each permitted lease must have an initial term of no less than twelve (12) months and expressly provide that the tenant and all Occupants have received a copy of this Declaration and the Rules & Regulations and will comply with the same. Each Owner who leases his or her Residence to a third party shall be personally liable to the Association for compliance with this Declaration and the Rules & Regulations by the Occupants of his or her Residence.

**Section 9.19 Rules & Regulations.** Each Owner and all Occupants, invitees, licensees and guests in the Community shall comply with the Rules & Regulations as then in effect.

## ARTICLE X INSURANCE AND CASUALTY LOSSES

**Section 10.1. Insurance by Association.** The Board or its duly authorized agent shall have the authority to obtain, and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association. This insurance shall cover (i) loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard, and (ii) comprehensive general liability insurance covering all of the Common Property. The Board shall also have the authority, to obtain director's and officer's liability insurance, said insurance to cover the members and officers of the Board and the members of the ACC, insuring the same against any negligence or nonfeasance. Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board shall be written in the name of Association, as trustee, for the respective benefited parties. Such insurance shall be governed by the provisions hereinafter set forth:

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

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

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

(D) All casualty insurance policies shall have an inflation guard endorsement and

an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified Persons.

**Section 10.2. Insurance Deductible.** The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

**Section 10.3. Damage or Destruction to Improvements.** Immediately after the damage or destruction by fire or other casualty of all or any portion of the improvements covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction, as used in this Article, means restoring or repairing the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. The Association shall restore or replace such damaged or destroyed improvements. If the insurance proceeds, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may be established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote as required elsewhere in this Declaration, such assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such an emergency assessment shall be levied against all the Owners equally in the same manner as annual assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by the Association together with any insurance proceeds, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and used for the benefit of the Association.

**Section 10.4. Insurance by Owners; Damage and Destruction -- Lots.** Each Owner shall be responsible for insuring his or her own Residence and any property maintained by Owner or Occupants in the Residence or elsewhere in the Community. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris there from within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in Article XII of this Declaration.

**Section 10.5. Additional Insurance.** In addition to coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time by either the Veterans Administration or the Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

The Association shall have the authority to obtain and maintain a blanket fidelity bond for all officers, directors and employees of the Association and all other persons who handle, or are responsible for, funds of or administered by the Association. If the Association engages a management agent who has responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or administering the funds of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the management agent at any time during the period of each bond.

## **ARTICLE XI CONDEMNATION**

The Association shall be the sole representative with respect to condemnation proceedings concerning Common Property and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Common Property shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Property under threat of condemnation only if approved by sixty-seven percent (67%) of the Class A Members and, for so long as Declarant own any Lots, the written consent of Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Property to the extent available, unless within sixty (60) days after such taking sixty-seven percent (67%) of the Class A Members and, for so long as Declarant owns any Lots, Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ACC.

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

## **ARTICLE XII ENFORCEMENT**

**Section 12.1. General.** Each Owner shall comply strictly with the By-Laws and the published Rules & Regulations, if any, adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to its Lot, if any. Failure to comply with any of the same shall be grounds for imposing and assessing of fines, or

temporarily suspending voting rights and the right of use of certain of the Common Property and services paid for as a common expense, and/or instituting an action to recover sums due, for damages and/or injunctive relief, such actions to be maintainable by Declarant, the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorney's fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the Rules & Regulations are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by the recovery of damages and that Declarant, the Association or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right or action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach or threatened violation or breach of the provisions of this Declaration, the By-Laws or any Rules & Regulations, however long continued.

**Section 12.2. Right of Abatement.** In addition to the remedies contained in Section 12.1 hereof and other provisions of this Declaration, the Association may also be entitled to a "Right of Abatement" as further described hereinbelow:

(A) Except where different notice provisions are provided herein, in the event of violation or breach by an Owner of any restriction or provision contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after mailing of said written notice, then the Association shall have the Right of Abatement.

(B) The Right of Abatement means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry or such actions are carried out in accordance with the provisions of this Section. The Association, in exercising its rights hereunder, shall be entitled to all costs incurred that may be reasonably necessary to correct such violation together with all costs of collection, including reasonable attorney fees, together with interest thereon at the lower of the highest rate permitted by law or twelve (12%) percent



per annum, said charges to be an individual assessment in accordance with the provisions of Section 5.12 hereof.

**Section 12.3. Specific Performance.** Nothing contained in this Declaration shall be deemed to affect or limit the rights of Declarant, the Association or any Owner to enforce the restrictions contained herein by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of violation of or failure to perform any of the obligations provided by this Declaration and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

**Section 12.4. Arbitration.** Any controversy or claim arising out of the enforcement of the provisions of this Declaration shall be settled as expeditiously as possible by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the judgment upon the award rendered by the arbitrator may be entered into any court having jurisdiction thereof. This provision in no way limits the lien rights and Rights of Abatement stated above.

### ARTICLE XIII AMENDMENTS

**Section 13.1. Amendments by Declarant.** Subject to the terms of Section 13.2 of this Declaration, Declarant, for so long as it owns a Lot primarily for the purpose of sale may amend this Declaration by an instrument in writing filed and recorded in the records of the Office of the Clerk of the Superior Court of Cherokee County, Georgia, without the approval of any Owner or Mortgagee if:

(A) such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith;

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

(C) such amendment is required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on any Lot or other improvements subject to this Declaration: (e.g., the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation);

(D) such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots or other improvements subject to this Declaration;

(E) such amendment is deemed necessary, in Declarant's sole opinion, to make the provisions more workable, to clarify any provision or ambiguity or to eliminate any confusion or conflict;

(F) such amendment annexes Additional Property to this Declaration pursuant to the terms set forth in this Declaration; or

(G) such amendment is designed to facilitate the sale of Lots or the management or operation of the Community, and the same does not materially and adversely affect the rights of any Owner or Mortgagee.

**Section 13.2 Limitations.** Notwithstanding anything contained in Section 13.1 hereof, the Owner and/or Mortgagee, as the case may be, must consent to any amendment by Declarant if:

(A) such amendment adversely and directly affects the title to any Lot, and then, such amendment shall be valid only upon the written consent thereto by the existing Owners affected thereby;

(B) such amendment materially and adversely alters or changes any Owner's right to the use and enjoyment of his Lot as set forth in this Declaration, and then, such amendment shall be valid only upon the written consent thereto by two-thirds (2/3) of the existing Owners affected thereby;

(C) such amendment materially and adversely affects the security, title or interest of any Mortgagee, and then, such amendment shall be valid only upon the written consent thereto of all Mortgages so affected; or

**Section 13.3. Amendment by Association.** Amendments to this Declaration, other than those authorized by Section 13.1 hereof, shall be proposed and adopted in the following manner:

(A) notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be provided to each member of the Association as set forth in this Declaration;

(B) at such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by the Members. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant;

(C) the agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration, shall be evidenced

by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the written statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which written statement shall state that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself;

(D) this Article shall not be amended without the prior written approval of Declarant, so long as such entities own a Lot primarily for the purpose of sale; and

(E) neither Declarant nor the Association can convey any portion of the Common Area as a security interest or as collateral for any loan to the Association without the consent of two-thirds (2/3) of all Class A Members and the Class B Members as well as the consent of all Mortgagees.

**Section 13.4. Effective Date.** The effective date of any amendment shall be the date of recording the amendment in the office of Superior Court of Cherokee County, Georgia, whichever may first occur, or, on such later date as may be specified therein.

#### **ARTICLE XIV ANNEXATION, WITHDRAWAL AND CONSTRUCTION AND SALE PERIOD**

**Section 14.1. Annexation of Property:** For a period expiring ten (10) years from the date hereof, any Additional Property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Cherokee County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such Additional Property subject to the provisions of this Declaration; or by filing an amendment to the Declaration which shall be executed by the Declarant and has been consented to by the owners of the Additional Property to be annexed if any portion of such real property is owned by someone other than Declarant. After ten (10) years from the date hereof, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members.

**Section 14.2. Withdrawal of Property:** For so long as Declarant has authority to appoint and remove directors and officers of the Association, Declarant, without the consent of the Class A Members shall have the right to withdraw portions of the Property from the provisions of this Declaration if the withdrawn property has been subjected to the provisions of this Declaration in error, or if the withdrawal is required by any changes in the plan for the Community. Such withdrawal shall be accomplished by filing in the Office of the Clerk of the Superior Court of Cherokee County an amendment to this Declaration which shall be executed by the Declarant and has been consented to by the owners of the real property to be withdrawn if

any portion of said real property is owned by someone other than Declarant.

**Section 14.3 Construction and Sale Period:** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, Rules & Regulations, design standards, and any amendments thereto, until Declarant's right unilaterally to subject Additional Property to this Declaration as provided herein terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as may reasonably be required by the Declarant and such builder in the development, construction and sales activities related to property subject to this Declaration, including, but not without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, cable television, broadband, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community; the right to maintain sales signs and project signs on individual Lots, within the right-of-way of any road, and at the entrance(s) to the Community; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model residences, off-street parking areas and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices.

## ARTICLE XV MISCELLANEOUS

**Section 15.1. Failure of Enforcement.** In the event that the Association shall fail to enforce compliance with any of the provisions of this Declaration by the owner of any Lots, then the owner of any other Lots shall have the right to file an action in Superior Court of Cherokee County, Georgia for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

**Section 15.2. Waivers.** In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach, and no waiver by the Association of any term, covenant, condition, provision or agreement, shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

**Section 15.3. Variiances.** Notwithstanding anything to the contrary contained herein, the

Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of Community for the development.

**Section 15.4. Notices.** Any notice required to be sent to any Member pursuant to any provision of this Declaration may be served by depositing such notice in mails, postage prepaid, addressed to the Member to whom it is intended, at the address which such shall have furnished to the Secretary of the Association in accordance with the By-Laws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of any Lots owned by such member. The date of service shall be the date of mailing.

**Section 15.5. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end provisions of this Declaration are declared to be severable.

**Section 15.6. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 15.7. Duration.** Unless otherwise provided by Georgia law, the covenants contained in this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Lots within the Properties, which instrument is recorded in the Public Records; provided, however, regardless of the provisions of Georgia law, this Declaration may not be terminated without the prior written consent of the Declarant if Declarant owns any portion of the Community. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Lots and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Property, which instrument complies with the requirements of O.C.G.A. § 44-5-60(d) and is recorded in the real property records of Cherokee County, Georgia. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

**Section 15.8. Indemnification.** In accordance with the Georgia Nonprofit Corporation Code and to the full extent allowed, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a member or officer or ACC against any and all expenses, including attorney's fees, imposed upon or reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was

unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances.

**Section 15.9. Liability of Successor Declarant.** Nothing contained herein shall make responsible or subject to liability any successor to Declarant by operation of law or through purchase of Declarant's interest in the Community or any portion thereof, whether by foreclosure of a deed to secure debt or other security interest encumbering the Community or delivery of a deed in lieu of foreclosure, for any act, omission or matter occurring or arising from any act, omission or matter occurring prior to the time such successor succeeded to the interest of Declarant.

## ARTICLE XV GENERAL PROVISIONS

**Section 16.1. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 16.2. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article to which they refer.

**Section 16.3. Preparer.** This Declaration was prepared by Schreeder, Wheeler & Flint, LLP, 1600 Candler Building, 127 Peachtree Street, N.E., Atlanta, Georgia 30303-1845.

**Section 16.4. Rights of Third Parties.** This Declaration shall be recorded for the benefit of Declarant, the Owners, and the Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Community or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the provisions of this Declaration and the rights of Declarant and mortgagees as herein provided, the Owners shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

**Section 16.5. Conflicts.** In the event of any conflict between the Official Code of Georgia, this Declaration, the By-Laws or the Articles of Incorporation, the Official Code of Georgia, this Declaration, the By-Laws and then the Articles of Incorporation, in that order, shall prevail.

**Section 16.6. State of Georgia.** This Declaration shall be construed in accordance with the laws of the State of Georgia.

**Section 16.7. Agreements.** All agreements and determinations, including settlement

agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community. All such agreements and determinations shall be subject to the prior approval of Declarant, so long as Declarant owns any property primarily for Community and/or sale in the Community.

**Section 16.8. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the vote of the Class A Members and, for so long as the same exists, the Class B. Member.. 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, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**Section 16.9. Implied Rights.** The Association may exercise any rights or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

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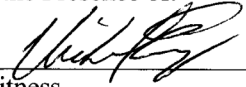
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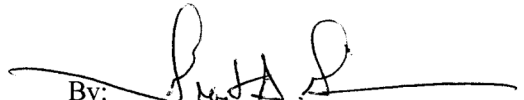
IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer under seal on the day and year first above written.

**DECLARANT**

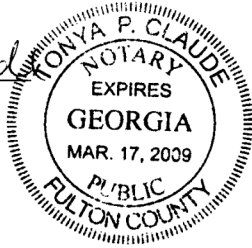
BEAZER HOMES CORP.

Signed, Sealed and Delivered  
In the Presence of:

  
\_\_\_\_\_  
Witness

  
By: \_\_\_\_\_  
Name: **Grant A. Grimes**  
Title: **VP Land Acquisition**  
**Beazer Homes Corp. - GA Division**

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



[CORPORATE SEAL]