



## 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 RESIDENTIAL  
COVENANTS AND CONDITIONS AND RESTRICTIONS  
FOR OWEN GLEN**

THE DECLARATION OF RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS for **Owen Glen** (the "Declaration") is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by **Owen Glen, Inc.** (the "Declarant").

**WITNESSETH:**

Declarant is the owner and developer of that certain real property located in Union County, Georgia and more particularly described on **Exhibit "A"** attached hereto and incorporated hereby by reference (the "Property"), which Property is being developed by Declarant as a residential community (the "Project").

Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in the Project and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described.

Declarant desires to impose pursuant hereto easements, covenants, conditions and restrictions upon all of the Property.

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of the Project. Subject to the herein-described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property, and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

**ARTICLE I**

**DEFINITIONS**

**Section 1.1. Definitions.** The following terms when used in this Declaration, or any amendment or supplement hereto (unless the context shall otherwise require) shall have the following meanings:

(a) "Additional Declaration" shall mean and refer to any Declaration of Residential Covenants, Conditions and Restrictions filed with the Clerk of the Superior Court of Union County, Georgia with regard to a certain Phase, section or portion of the Property, as more particularly described in Section 2.3 thereof.

- (b) "Annual Assessments" shall have the meaning as set forth in Section 4.3 hereof.
- (c) "Architectural Changes Committee" shall have the meaning as set forth in Section 9.13 hereof.
- (d) "Architectural Control Committee" shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Project and to perform certain other functions described in the Declaration.
- (e) "Architectural and Landscape Guidelines" shall have the meaning set forth in Section 9.3 hereof.
- (f) "Articles" shall mean and refer to the Articles of Incorporation of the Association, to be prepared by Declarant, as they may be amended from time to time.
- (g) "Association" shall mean and refer to Owen Glen Property Owner's Association, Inc. a Georgia not-for-profit corporation with regard to the ownership and/or maintenance of the Property and the Project.
- (h) "Association Member" shall mean and refer to any person who is a member of the Association as set forth in Section 3.1 hereof. Association Members shall include the Association Members, Declarant for so long as Declarant owns any part of the Property and all Owners of Lots or other portions of the Property.
- (i) "Board" shall mean and refer to the Board of Directors of the Association.
- (j) "Bylaws" shall mean and refer to the Bylaws of the Association to be prepared by Declarant, as they may now or hereafter exist
- (k) "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.
- (l) "Common Area" or "Common Areas" shall mean and refer, singularly or collectively, as applicable to all land, improvements, amenities and other properties which hereafter shall be deeded to or acquired by in fee, from time to time by Declarant or the Association specifically dedicated for the common use and enjoyment of the Owners and the Occupants, including without limitation, the Roadways (unless dedicated for public use), and the property identified and designated as "Common Area" on any recorded Plat or Plats of the Property or any part of it.
- (m) "Declarant" shall mean and refer to Owen Glen, Inc., their successors in title and assigns; provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign such person is designated as the "Declarant" hereunder by the grantor of such conveyance,

which grantor shall be the “Declarant” hereunder at the time of such conveyance; provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as “Declarant” hereunder shall cease, it being understood that as to all of the Property, there shall be only one Person entitled to exercise the rights and powers of the “Declarant” hereunder at any time.

(n) “Declaration” shall mean and refer to this Declaration of Residential Covenants, Conditions and Restrictions for Owen Glen as it may be amended and/or supplemented from time to time as herein provided.

(o) “Dwelling Unit” shall mean and refer to a portion of the Project, whether developed or undeveloped, intended for development, use and occupancy as an attached or detached dwelling for a single family. By way of illustration, but not limitation, each single family, detached house on a Lot, each residence in a duplex, each patio home, each “zero lot line” home, each cluster home, each condominium unit and each townhome shall constitute a separate Dwelling Unit. Each lot or tract containing vacant land intended for residential development or land on which improvements are under construction shall be deemed to contain one (1) Dwelling Unit. Upon issuance of one or more Certificate(s) of Occupancy for a structure or structures constructed on a Lot or Tract, however, the Lot or Tract on which such structure(s) are constructed shall be deemed to have the number of Dwelling Units as are constructed thereon.

(p) “Golf Course” shall mean and refer to the golf course facilities constructed on to be on property which is adjacent to the Property, and which is more particularly described on **Exhibit “C”** attached hereto and made a part hereto. The Golf Course may include separate golf facilities, a golf club, a pro shop, other amenities and a parking area of such size and at such location as shall be determined by the Golf Course Owner.

(q) “Golf Course Owner” shall mean the owner of the property upon which the Golf Course is constructed, who is currently Discover Golf, LLC, its successors and assigns.

(r) “Entrance Monument Easement” shall mean and refer to the easements reserved by Declarant which may be granted to the Association over, across and under certain areas of the Property, for the installation and maintenance of entrance of monuments and related improvements for the Project.

(s) “Improvement” shall have the meaning as set forth in Section 9.4 hereof.

(t) “Landscape Easements” shall mean and refer to the easements reserved by Declarant and granted to the Association over, across and under certain areas of the Property, for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including irrigation facilities.

(u) “Lot” shall mean and refer to any numbered or lettered residential tract of land shown on any Plat which is part of the Property and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract is located. No tract of land shall become a “Lot” as the word is used herein until a Plat of the area on which the same is

located is recorded with the Clerk of Superior Court of Union County, Georgia.

(v) "Maintenance Area" shall have the meaning as set forth in Section 10.8 hereof.

(w) "Mortgage" shall mean and refer to any mortgage or deed to secure debt constituting a first lien on a Lot, Tract or Dwelling Unit.

(x) "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

(y) "Occupant" shall mean and refer to any person occupying all or any portion of a Dwelling Unit, Lot, or Tract for any period of time, regardless of whether such person is a tenant of the Owner of such space.

(z) "Owner" shall mean and refer to the record owner, whether one or more persons or entities of fee simple title to any Dwelling Unit, Lot, Tract or other portion of the Property, but excluding those having such interest merely as security for the performance of an obligation.

(aa) "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

(bb) "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded with the Clerk of the Superior Court of Union County, Georgia.

(cc) "Plat" shall mean and refer to any plat of the Property or any part of it which is recorded from time to time with the Clerk of the Superior Court of Union County, Georgia.

(dd) "Project" shall mean and refer to the residential development to be developed by Declarant known as Owen Glen, into which the Property is being developed.

(ee) "Property" shall mean and refer to that certain real property located in Union County, Georgia and more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration as authorized herein.

(ff) "Roadways" shall mean and refer to any of the private roads, streets, and drives developed, constructed and installed by the Declarant for access, ingress and egress to and from any portion of the Property.

(gg) "Supplementary Declaration" shall mean and refer to any Supplementary Declaration of Covenants, Conditions and Restrictions filed with the Clerk of the Superior Court of Union County, Georgia to bring additional property within the coverage of this Declaration and the jurisdiction of the Association.

(hh) "Tract" shall mean and refer to any separate and identifiable tract of land which is a

part of the Property, whether or not shown on a Plat, which is not a Lot.

- (ii) "Turnover Date" shall have the meaning set forth in Section 3.2 hereof.

## ARTICLE II

### PROPERTY

Section 2.1. Property Made Subject to this Declaration. This Declaration shall be governed by the provisions of the Georgia Property Owners' Association Act (O.C.G.A. 44-3-220 et. seq.). The Property is hereby made subject to this Declaration, and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2.2. Additional Property. Declarant shall have the right, at its election without the consent of any Owner or Owners, to bring within the coverage of this Declaration and the jurisdiction of the Association any additional property. Such additions authorized hereby shall be made by filing of record with the Clerk of the Superior Court of Union County, Georgia, Supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property. Each such Supplementary Declaration shall extend the scheme of this Declaration and the jurisdiction of the Association to such additional property and thereby subject such additional property to assessment for its share of the Associations' expenses as defined herein. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or appropriate to reflect the different character of the additional property. Nothing contained in this Section 2.2 however, shall be construed to obligate Declarant to bring any additional property within the coverage of this Declaration.

Section 2.3. "Additional Declaration". In addition to the controls covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any Phase, section or portion of the Property owned by Declarant to additional or different controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration with the Clerk of the Superior Court of Union County, Georgia covering only such Phase, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of an Association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration (such as, for example, a condominium association). Whether or not an Association is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by the Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided in such Additional Declaration.

Section 2.4. Merger or Consolidation. Upon any merger or consolidation of an Association with

another Association, the properties, rights and obligations of the Association may be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may be added to the property, rights and obligations of such Association as the surviving corporation pursuant to a merger. The surviving or consolidated Association shall be considered an Association and shall administer the terms and provisions of this Declaration (to the extent they relate to the Phase(s) or section(s) of the Property over which such Association has jurisdiction) and the applicable Additional Declarations affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effectuate a revocation, change or addition to the terms and provisions of this Declaration or any Additional Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 2.5. Changes to this Declaration or Additional or Supplementary Declarations Requiring Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, Declarant may modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplementary Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.1. Membership in the Association. Each and every owner of a Dwelling Unit, Lot or Tract shall automatically become and be an Association Member upon the first conveyance by Declarant to an Owner of a Dwelling Unit, Lot or Tract within the Phase or section of the Property over which the Association has jurisdiction. In addition, for so long as Declarant owns any part of the Property, Declarant shall be an Association Member. All Owners of Dwelling Units, Lots or Tracts shall be Association Members. The Association Bylaws shall control with respect to the determination of the proper exercise of voting rights with respect to portions of the Property owned by two (2) or more undivided interests.

Section 3.2. Classes of Voting Association Members. The Association shall have two classes of voting membership:

Class I. Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled to one (1) vote for each Dwelling Unit, Lot or Tract owned by such Association Member.

Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Dwelling Unit, Lot or Tract located on the Property in the Project owned by Declarant.

Notwithstanding anything contained herein to the contrary, the Class II Association Membership shall cease and be converted to a Class I Association Membership on the earliest to

occur of (a) the date on which Declarant no longer owns any part of the Property; or (b) the date Declarant shall elect, in its sole discretion, that its Class II membership shall cease and be converted to Class I membership (which election may be made, if at all, upon Declarant giving written notice of the election to the Board). The earliest to occur of (a) or (b) above shall herein be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class I Association Member.

Section 3.3. Voting. Quorum and Notice Requirements for the Association. The notice requirement for all actions to be taken by the Association Members at meetings of the Association shall be as set forth in the Bylaws. Except as may be otherwise provided in this Declaration or in the Bylaws, the presence in person or by proxy of more than fifty percent (50%) of the total votes existing in the Association shall constitute a quorum at all meetings of the Association. In the event a quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the quorum required at the first meeting. In the event a quorum is not present at the first subsequent meeting, another meeting may be called, subject to the same notice requirement, and the required quorum at such second subsequent meeting shall be one-fifth (1/5) of the quorum required at the original meeting.

Section 3.4. Membership in an Association. If an additional Association shall have been established with respect to any Phase or section of the Property in connection with an Additional Declaration, each and every Owner of a Lot, Tract or Dwelling Unit within such Phase or section of the Property shall automatically become and be a Member of such Association.

Section 3.5. Classes of Members: Voting, Quorum and Notice Requirements. The designation of classes of Members of an additional Association and provisions regarding voting, quorum and notice requirements and other applicable terms relating to membership in an additional Association shall be included in the Additional Declaration for the portion of the Property over which such Association has jurisdiction and/or in the Articles of Incorporation and/or Bylaws of such particular Association.

## ARTICLE IV

### ASSOCIATION ASSESSMENTS

Section 4.1. Covenant for Assessment. Each owner of any Dwelling Unit, Lot or Tract other than Declarant, by acceptance of a deed or other conveyance document creating in such Owner an interest in the acquired Property, by acceptance of a deed or other conveyance document conveying the interest, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, such assessments to be fixed, established and collected from time to time as herein provided; (2) Special Assessments for capital improvements and other purposes, such assessments to be fixed, established and collected from time to time as herein provided; and (3) Special Individual Assessments levied against individual Owners, as may be fixed, established and collected from time to time as herein provided. The assessments described in (1), (2) and (3) of this Section 4.1 (the "Assessments"), together with interest thereon, late charges, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon each Dwelling Unit, Lot or Tract, as the case may be, against which each such Assessment is made and



shall also be the personal obligation of the Owner, at the time when the Assessment fell due. No Owner may exempt himself from liability for such Assessment or waive or otherwise escape liability for the Assessments by non-use of the Common Area or any other amenity or abandonment of his property. The personal obligation to pay any such Assessment, together with interest thereon, attorneys' fees, late charges, court costs and other costs of collection thereof, as herein provided, shall pass to the successors in title of such Owner whether or not expressly assumed in writing by such successors; provided, however, that such personal obligation to pay Assessments and other costs and charges shall not pass to Mortgagees or trustees under Mortgages of such Owner who succeed to the title of such Owner. Notwithstanding anything to the contrary contained in the foregoing or elsewhere in this Declaration, Declarant shall be exempt from all Assessments relating to any Dwelling Unit, Lot or Tract owned by Declarant.

Section 4.2. Purpose of Association Assessments. The assessments levied by the Association shall be used for the purposes of the carrying out of the rights and powers of the Association pursuant to the terms and provisions hereof and promoting the enjoyment and welfare of the Project, and, in particular, but without limitation, for the following:

(a) Maintenance and repair of any Common Areas and Maintenance Areas within the Project; including the collection of amounts to fund reserves for capital improvements and replacement costs as set forth in Section 4.12.

(b) Payment of all ad valorem taxes levied against the Common Areas and Maintenance Areas and any other property owned by the Association;

(c) Payment of all premiums on all insurance carried by the Association pursuant hereto or pursuant to the Association Bylaws or otherwise;

(d) Payment of all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws, including all costs and expenses of the Architectural Control Committee;

(e) Carrying out the powers and duties of the Board, as more particularly described in Article V hereof;

(f) Carrying out all other purposes and duties of the Association and the Architectural Control Committee as stated in the Articles, the Bylaws and in this Declaration; and

(g) Approving the rubbish removal service companies to be used and paid for by the Owners of the Lots, Dwelling Units, and Tracts;

Section 4.3. Payment of Annual Assessments: Due Dates. Each Owner of a Dwelling Unit, Lot or Tract shall pay to the Association the annual assessments levied by the Association (the "Annual Assessments") as hereinafter set forth.

(a) The Annual Assessment provided for herein as to any Dwelling Unit, Lot or Tract shall commence as of the date of the conveyance by Declarant to an Owner other than Declarant of

such Dwelling Unit, Lot or Tract. The Annual Assessment for the first year in which a Dwelling Unit, Lot or Tract is subject thereto shall be prorated based upon the number of days remaining in the calendar year from the date of such conveyance.

(b) Subject to the provisions of (a) above, the Annual Assessments as to each Dwelling Unit, Lot or Tract shall be due and payable in equal installments annually on such dates as may be fixed by the Board, in its sole discretion; provided, however, the Board, without the approval of any Association Member or Owner, may provide that the Annual Assessments be paid in installments due more or less frequently than annually, and thereafter the Annual Assessments shall be paid in such manner and on such dates as may be fixed by the Board, in its sole discretion.

#### Section 4.4. Amount of Annual Assessments.

(a) It shall be the duty of the Board annually to prepare a budget (the "Annual Budget") covering the estimated costs of operating the Association during the coming year, taking into consideration, among other things, the then-current development and/or maintenance costs to be borne by the Association, estimated increases in development and/or maintenance costs and the future needs of the Association (which may include a reasonable contingency fund).

(b) The Annual Assessment to be levied on any Lot or Tract for a calendar year shall be levied based upon the number of Dwelling Units on such Lot or Tract based on its pro-rata share of the Annual Budget. All Dwelling Units shall be assessed at uniform rates. The Annual Assessment to be levied for a calendar year shall be in an amount as set by the Board in its sole discretion based on the Annual Budget; provided, however, that in any given year the amount of Annual Assessments levied by the Board shall not be increase over the previous by an amount that exceeds the greater of 10% or the increase in the Consumer Price Index. Notwithstanding the foregoing, the Board may levy Annual Assessments that exceed the cap set forth in the previous sentence to cover expenses associated with any Project amenities.

(c) The Board shall fix the amount of the Annual Assessment as to each Dwelling Unit for any calendar year and shall send written notice of the amount of and due date of each installment of such Annual Assessment to each Owner, at least thirty (30) days prior to the first due date of an assessment in such calendar year.

(d) Should any Dwelling Unit, Lot or Tract be conveyed by Declarant during a calendar year beginning prior to the Turnover Date, then the purchaser of such Dwelling Unit, Lot or Tract shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Dwelling Unit, Lot or Tract, prorated based upon the number of days remaining in such installment period. Should any Dwelling Unit, Lot or Tract be conveyed by Declarant during a calendar year beginning after The Turnover Date, or be conveyed by any Owner other than Declarant during any calendar year, then the Annual Assessment applicable to such Dwelling Unit, Lot or Tract shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

(e) Declarant shall have the authority to reduce the Annual Assessment and any Special Assessments on any Lot on which no structure has been completed (i.e. no Certificate of Occupancy

has been issued).

Section 4.5. Payments by Declarant in Lieu of Annual Assessments. Notwithstanding the provisions of this Article IV for calendar years beginning prior to the Turnover Date, Declarant may, in its discretion, pay for each such calendar year that portion of the annual expenses of the Association (excluding any reserves) which exceeds the total amount of the Annual Assessments paid by the Owners.

Section 4.6. Special Assessments. In addition to the Annual Assessments described in Section 4.3 and Section 4.4 above, the Board, without a vote of the Association Members, may levy in any assessment year or years a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Association which are not paid for out of funds on hand in the Association or out of the Annual Assessments collected by the Association. Such costs may include, but shall not be limited to, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon or within the Common Area and Maintenance Areas, including fixtures and personal property related thereto, and the roadways serving the Project. All costs incurred by the Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such a Special Assessment must be approved by a vote of the Association Members entitled to cast no less than two-thirds (2/3) of all votes entitled to be cast by the Association Members. Special Assessments shall be assessed pursuant to this Section 4.6. against the Owners of Dwelling Units, Lots and Tracts on a pro rata basis; provided, however Declarant shall not be obligated to pay any Special Assessment on Dwelling Units, Lots or Tracts owned by Declarant except with Declarant's prior written approval. The due date of any Special Assessment levied pursuant to this Section 4.6 shall be fixed in the Board resolution authorizing such Special Assessment. Upon the establishment of a Special Assessment, the Board shall send written notice of the amount and due date of such Special Assessment to each Owner, at least thirty (30) days prior to the date such Special Assessment is due.

Section 4.7. Special Individual Assessments. The Board may levy Special Assessments against individual Owners ("Special Individual Assessments") (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and Maintenance Areas, including the Roadways, occasioned by the acts of Owner(s) and not the result of ordinary wear and tear or (ii) for payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated hereunder, including, without limitation, penalties assessed by the Architectural Control Committee pursuant to the Architectural and Landscape Guidelines, reimbursement to the Architectural Control Committee for any sums it expends on an Owner's behalf pursuant to the Architectural and Landscape Guidelines, and reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article XI; provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment pursuant to this Section 4.7 shall be fixed in the Board resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special

Individual Assessment is due.

Section 4.8. Omission of Association. The omission of the Board, before the expiration of any year, to fix the Annual Assessments hereunder for that or the next year, shall not be deemed to waive or modify in any respect any of the provisions of this Declaration, or to release any Owner from the obligation to pay the assessment due from such Owner for that or any subsequent year, and the Annual Assessments fixed for the preceding year shall continue until new Annual Assessments are fixed.

Section 4.9. Collection Agent. At the option of the Board, a representative of the Association, or any third party agent of the Board, as designated by the Board, may act as collection agent for any and all Assessments (whether Annual Assessments, Special Assessments or Special Individual Assessments) imposed by the Association against the Owners.

Section 4.10. Owner's Personal Obligation for Payment of Assessments. The Annual Assessments, Special Assessments and Special Individual Assessments provided for herein shall be the personal and individual debt of the Owners (as of the due date of the applicable Assessment payment) to which such Assessments relate. No Owner may exempt himself from liability for such Assessments by non-use of his property or the Common Area or otherwise. In the event of default in the payment of any such Assessment, the defaulting Owner shall be obligated to pay interest at the rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less, on the amount of the Assessment from the due date thereof until the date such Assessment and interest are paid, together with all costs and expenses of collection, including reasonable attorneys' fees. In addition, the delinquent Owner shall also pay such late charges as may have been theretofore established by the Board to defray the costs arising because of late payment.

Section 4.11. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article IV but unpaid shall become, together with interest and late charges as provided in this Article IV and the cost of collection, including reasonable attorneys' fees, a continuing lien and charge on the portion of the Property and improvements thereon owned by the defaulting Owner (the "Defaulting Lot") as of the Assessment due date and shall bind such property and improvements then in the hands of the Owner, and the defaulting Owner, his or her heirs, devisees, personal representatives, successors, and assigns. The aforesaid lien shall be superior to all other liens and charges against such Defaulting Lot and the improvements thereon except: (1) liens for ad valorem taxes on the Defaulting Lot, (2) the lien of any first priority Mortgage covering the Defaulting Lot and the lien of any other Mortgage recorded prior to the recording of this Declaration, or (3) the lien of any secondary purchase money mortgage covering the Defaulting Lot, provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Defaulting Lot. The recording of this Declaration shall constitute record notice of the existence of the lien, and no further recordation of any claim of lien or assessments shall be required. Not less than ten days after notice is sent by certified mail, return receipt requested, to the Owner of the Defaulting Lot both to the address of such lot and at any other address or addresses which the Owner of the Defaulting Lot may have designated to the Association in writing, the lien may be foreclosed by the Association by any action, judgment, and foreclosure in the same manner as other liens for the improvements of real property. The notice shall specify the amount of the assessments then due and payable together with authorized late charges and interest accrued thereon. The Association shall have the power to bid on the

Defaulting Lot at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. The lien for assessment shall lapse and be of no further effect, as to assessments or installments thereof, together with late charges and interest applicable thereto, which first become due and payable more than three (3) years prior to the date upon which the notice as contemplated herein is given or more than three (3) years prior to the institution of an action therefor if an action is not instituted within ninety (90) days after the giving of the notice; provided, however, the Board shall have the power to subordinate the aforesaid assessment lien to the lien of any Mortgage or to any other lien, and such power shall be entirely discretionary with the Board.

Section 4.12. Reserves. The Annual Assessments shall, as determined by the Board, include reasonable amounts as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Areas or Maintenance Areas. All amounts collected as reserves, whether pursuant to this Section 4.12 or otherwise, shall be deposited by the Association in a separate interest bearing bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

Section 4.13. Certificate Regarding Assessments. The Association, or any third party agent of the Board, shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, or signed by an authorized representative of such third party agent, setting forth whether the assessments on a specified Dwelling Unit, Lot or Tract have been paid. A properly executed certificate of the Association or such third party agent as to the status of assessments on a Dwelling Unit, Lot or Tract shall be binding upon the Association as of the date of its issuance.

## ARTICLE V

### THE ASSOCIATION BOARD

Section 5.1. Members of the Board. So long as Declarant owns any Dwelling Unit, Lot, Tract or other portion of the Property, the members of the Board shall be appointed by Declarant. The number of members of the Board shall be as set forth in the Bylaws. So long as Declarant owns any Dwelling Unit, Lot, Tract or other portion of the Property, Declarant may remove directors with or without cause and appoint new directors to replace those removed, in Declarant's sole discretion. At such time as Declarant owns no Dwelling Unit, Lot, Tract or other portion of the Property, then the members of the Board shall thereafter be elected by a vote of the Association Members in accordance with the Bylaws. Notwithstanding the foregoing, Declarant may choose, in its sole discretion, to relinquish its right to appoint, remove and replace the members of the Board prior to the time that it owns no portion of the Property, whereupon the Association Members shall thereafter elect the members of the Board in accordance with the Bylaws.

Section 5.2. Duties of the Board. The Board, for the mutual benefit of the Association Members and the Owners, shall have the following specific duties:

(a) To maintain or cause to be maintained the Common Areas and Maintenance Areas, including, but not limited to, planting, mowing, pruning, fertilizing, preservation and replacement of the landscaping and the upkeep and maintenance of sidewalks, pathways, trails and other

improvements in the Common Areas and Maintenance Areas, and the upkeep and maintenance of associated improvements;

(b) To maintain or cause to be maintained swales and medians of the Roadways ;

(c) To maintain or cause to be maintained any sidewalks, pathways and trails in the Project;

(d) To make available to each Association Member, upon written request of such Association Member, within ninety (90) days after the end of each year, an annual report of the Association and, upon resolution adopted by the Board or upon written request of the Association Members holding at least three-fourths (3/4) of the eligible votes of the Association at such time, to have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Association Member, upon written request by such Association Member, within thirty (30) days after completion;

(e) To pay for the cost of electricity for street lights and irrigation to be located in the Project and electricity serving any of the Common Areas and Maintenance Areas;

(f) To cause to be kept a an adequate record of all its acts and corporate affairs;

(g) To supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(h) As more fully provided in this Declaration:

(1) To fix the amount of all assessments;

(2) To send written notice of assessments pertaining to an Owner to such Owner;

(i) To issue, or to cause an appropriate officer to issue, upon demand to any person, a certificate setting forth whether or not any Assessment has been paid. (A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.);

(j) To procure and maintain adequate liability insurance covering the Association and the directors and officers thereof and adequate hazard insurance on the property owned by the Association;

(k) Subject to Declarant's right to appoint the Architectural Control Committee, to appoint the Architectural Control Committee, all as more particularly provided in Article IX of this Declaration;

(l) To approve the rubbish removal service companies to be used and paid for by the Owners of the Dwelling Units, Lots and Tracts in the Property; and

(m) To enter into agreements or contracts with Persons for the installation, maintenance

and repair of the street signs, street lamps and other "street furniture" in the Project.

Section 5.3. Powers of the Board. The Board, for the mutual benefit of the Association Members and the Owners, shall have the following specific powers and rights (without limitation of other powers and rights such Board may have):

- (a) To enter into agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Areas and Maintenance Areas or portions thereof;
- (b) To make reasonable rules and regulations for the use and operation of the Common Areas and Maintenance Areas, and to amend them from time to time;
- (c) To enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Areas and Maintenance Areas and/or the Association;
- (d) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas, Maintenance Areas and/or the Association;
- (e) Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws, to borrow funds to pay costs of operation of the Association, which borrowing may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Association Members see fit; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not mortgage any portion of the Common Area or Maintenance Area without the prior written approval of Declarant;
- (f) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (g) To sue or defend in any court of law on behalf of the Association;
- (h) To levy assessments in accordance with the provisions of Article V hereof;
- (i) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property of the Association; and if proceeds are insufficient to repair damage or replace lost property, and to assess the Owners in proportionate amounts to cover the deficiency;
- (j) To exercise for the Association all powers, duties and authority vested in or delegated by this Declaration, the Bylaws, or the Articles to the Association and not reserved to the Association Members or Declarant by other provisions of this Declaration, the Bylaws or the Articles;
- (k) To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;

- (l) To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;
- (m) To enter into agreements with builders regarding the construction of Improvements on Lots located in the Project;
- (n) To retain the services of legal and accounting firms;
- (o) As more fully provided in this Declaration, to foreclose the lien against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;
- (p) To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;
- (q) To the extent permitted hereby, to enforce the provisions of this Declaration and any Additional or Supplementary Declaration and any rules made hereunder or thereunder and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules and/or by Special Individual Assessments against any Owner for violation of such provisions or rules pursuant to the provisions of Section 4.7 hereof;
- (r) To contract with any third party or any Association Member (including, without limitation Declarant) for performance on behalf of the Association of services which the Association is otherwise required to perform pursuant to the terms hereof, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association;
- (s) To employ or retain the services of professional architects or other persons to serve on or advise the Architectural Control Committee and/or the Architectural Changes Committee;
- (t) To grant all necessary or appropriate easements and rights-of-way over and across the Common Areas when in its sole discretion it deems such an action to be necessary or appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sewerage and other utilities and drainage facilities and any easement to the owner of the Golf Club; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;
- (u) To contract with any third party, including any other property owners association for the sharing of costs of maintaining Common Areas or Maintenance Areas;
- (v) To take any and all other actions, and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder or for the operational protection of the Association;



(w) To contract with the Golf Course Owner for the sharing of the costs of maintaining irrigation systems which are or may be connected to the Golf Course irrigation systems and which irrigate or will irrigate the Common Areas or Maintenance Areas, and to provide for payment of the costs of providing water to the Common Areas or Maintenance Areas through such systems;

(x) To adopt reasonable rules from time to time governing conduct of Owners and other Persons occupying or otherwise located on the Property.

Notwithstanding anything contained herein to the contrary, none of the above-described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Association Members.

Section 5.4. Liability Limitations. Neither Declarant, nor any Association Member, nor the Board, nor the Association, nor any officers, directors, agents or employees, of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

Section 5.5. Reserve Funds. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Association. The aggregate deposits in such reserve funds shall not exceed an amount as may be reasonably determined by the Board to be necessary.

## ARTICLE VI

### PROPERTY RIGHTS IN THE COMMON AREA

Section 6.1. Owners' Easements of Enjoyment. Subject to the provisions of Section 6.5, every Owner, and each individual who resides with such Owner and guests of such Owner, shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to such Owner's Dwelling Unit, Lot, Tract or other portion of the Property; provided, however, such easement(s) shall not give such person the right to make alterations, additions or improvements to any part of any Common Area.

Section 6.2. Owners' Easements for Ingress and Egress. Every Dwelling Unit, Lot, Tract or portion of the Property shall be conveyed with (and each Owner shall be conveyed) a perpetual, non-exclusive right to use any roadway which may be constructed by Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot or other portion of the Property; provided, however, that to the extent any such facilities are dedicated to public use or to utilities by Declarant all such easements shall terminate at the time of dedication or grants of easements to utilities.

Section 6.3. Title to the Common Area.

(a) Declarant shall dedicate and convey (by deed without warranty) the fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default, restrictive covenants and utility easements, and any other encumbrances and mineral interests outstanding and of record. The conveyance of any portion of the Common Area shall occur on the date that a Plat or Plats are recorded showing such portion of the Common Area. Common Area may be conveyed by Declarant to the Association in whole or in part from time to time.

(b) Nothing contained herein shall prevent Declarant, by Additional Declaration or otherwise, from dedicating and conveying to any Association certain common areas to be owned by, operated, separately maintained and improved by that Association, and to be subject to easements of use and enjoyment restricted solely to the Members of that Association.

(c) Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property of the Association unless expressly dedicated by the Declarant or the Association for public use and shall not be considered as dedicated to the use and enjoyment of the public.

Section 6.4. Control of Common Areas. The Board shall have sole and exclusive control and authority over the usage of and guidelines with respect to the Common Areas; provided, however, the Board, in its sole discretion, may by resolution or guideline permit an Association, the property under the jurisdiction of which shall include or be adjacent to a Common Area, to either (a) maintain or improve, in whole or in part, the Common Area or (b) promulgate regulations with respect to its Members' usage of the Common Area; provided, further, however, any such authority delegated by the Association may be revoked, rescinded, or otherwise terminated at any time by the Association.

Section 6.5. Extent of Owners' Easements. The rights and easements of enjoyment of the Common Areas created hereby shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Owners who may use such Common Area) subject to limitations established by Declarant or the Association, as applicable, on such right to impose regulations;

(b) Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Association Members at which a quorum is present

all in accordance with the Bylaws, the right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities thereon and in aid thereof to mortgage the Common Area, provided the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners hereunder with regard to the Common Area, and further provided that until such time as Declarant no longer owns any portion of the Property, the Association may not mortgage any portion of the Common Area without the prior written approval of Declarant;

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(d) The right of the Declarant or the Board to grant easements upon, over, under and across, or convey fee simple title to, all or any part of the Common Area when in its sole discretion it deems such an action to be necessary or appropriate to serve the Property; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant easements upon, over, under and across, lease, or convey fee simple title to, any part of the Area without the prior written approval of Declarant.

## ARTICLE VII

### INSURANCE: REPAIR AND RESTORATION: CONDEMNATION

Section 7.1. Board of Directors. The Board shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) Fire. All improvements and all fixtures and personal property included in the Common Areas and Maintenance Areas and all personal property and supplies belonging to the Association shall be insured in an amount equal to the then-current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing coverage. The Board shall, at least annually, review the insurance coverage required herein and determine the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement. In addition to the provisions and endorsements set forth in Section 7.3 and Section 7.4, the fire and casualty insurance described herein shall contain the following provisions:

(1) Standard "Agreed Amount" and "Inflation Guard" endorsements;

(2) Construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;

(3) If available at a reasonable cost, waiver of subordination by the insurer as to

any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and

(4) A provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association, or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The fire and casualty insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, the Owners or Mortgagees; (2) loss payments are contingent upon action by the carrier's directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

(b) Public Liability. The Board shall also be required to obtain and maintain, to the extent obtainable, public liability insurance and officer's and director's liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use as the Project, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and Maintenance Areas, or from service on the Board; provided, however, in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof, nor shall the amount of such officer's and director's insurance be less than \$1,000,000 unless such coverage is determined by the Board to be unreasonably expensive. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Association Members, such public liability insurance shall be in amounts of not less than \$2,000,000 per occurrence for claims for bodily injury and property damage and such officer's and director's liability insurance shall be in amounts no less than \$1,000,000.

(c) Fidelity Coverage. The Board shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors (including without limitation any third party agent hired by the Board to perform duties of the Board) responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine from time to time desirable or legally required.

Section 7.2. Premium Expense. Premiums upon insurance policies purchased by the Board shall

be paid by the Board and charged as a common expense to be collected from the Members pursuant to Article IV hereof.

Section 7.3. Special Endorsements. The Board shall make diligent efforts to secure insurance policies that will provide for the following:

- (a) Recognition of any insurance trust agreement entered into by the Association;
- (b) Coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the named insured, any insurance trustee and all Mortgagees; and
- (c) Coverage that may not be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or any Mortgagee.

Section 7.4. General Guidelines. All insurance policies purchased by the Board shall be with a company or companies licensed to do business in the State of Georgia and holding a rating of "A VIII" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 7.5. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance covered by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Maintenance Areas.

Section 7.6. Insufficient Proceeds. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 7.7. Owner's Personal Property. The Association and Declarant shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, guests or invitees, located on or used at the Common Areas. Further, the Association and Declarant shall not be responsible or liable for any damage or loss to any personal property of any Owner, his family, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

Section 7.8. No Obligation to Insure Owners' Property. By virtue of taking title to a Dwelling Unit, Lot or Tract within the Project, each Owner acknowledges that neither the Association nor Declarant have any obligation to provide any insurance for any portion of such Lot or Tract or any Dwelling Unit or other property located thereon.

Section 7.9. Security. The Association may, in its sole discretion, but shall not be obligated to provide certain security and fire protection measures, and maintain or support certain other activities with the Project designed to make the Project safer than it might otherwise be; provided, however, should the Association provide, maintain or support any such measures or activities, then neither the Association, Board, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Project, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot, Tract or Dwelling Unit and each tenant, guest and invitee thereof acknowledges and understands that neither the Association, Board, Declarant nor any successor of Declarant are insurers, and each such Owner, and Occupant of a Lot, Tract or Dwelling Unit and their tenants, guests and invites hereby assume all risks for loss or damage to persons, property or contents belonging to any such persons.

Section 7.10. Declarant's Rights. Notwithstanding the foregoing provisions of this Article VII, so long as Declarant owns and portion of the Property, Declarant, in its sole and absolute discretion, may modify or delete any of the requirements of any provisions of this Article VII.

Section 7.11. Condemnation. Whenever any part of the Common Area or Maintenance Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of such taking shall be paid to the Association. The Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Dwelling Unit, Lot, Tract, or other portion of the Property, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area or Maintenance Area. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Area or Maintenance Area, provided such restoration is feasible in the opinion of the Board, with the excess, if any, to be retained by the Association and applied to future operating expenses or capital improvements by the Board, in its sole discretion. Nothing herein shall prevent Owners whose Lots or other property are directly affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots, Tracts or other property, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area or Maintenance Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Area, Maintenance Area, Dwelling Units, Lots, Tracts or other property without such allocation, the award shall be divided between affected Owners and the Board, as their interests may appear, by the Board in its sole discretion.

## ARTICLE VIII

## RESTRICTIONS

By Additional Declarations, Declarant may impose and file in regard to various Phases and/or sections of the Project controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens relating to, without limitation, types of premises, types of improvements, general development and improvement standards and other matters. Without limiting the provisions that may be included in such Additional Declarations, the Property, each Lot or Tract situated thereon and the Common Area and Maintenance Area shall be occupied and/or used subject to the following:

Section 8.1. Residential Purposes Only. Except as otherwise provided herein, each Lot shall be used exclusively for single-family, non-transient, residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices and sales-marketing offices (and for related uses) for the Project. No trade, business or business activity of any kind shall be conducted upon a Lot or any part thereof except by Declarant as described hereinabove or except with the written approval of the Board; provided, however, the Board may permit a business or business activity to be conducted on a Lot so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of this Declaration, does not create a disturbance and does not unduly increase traffic flow or parking congestion on the Property or in the Project. The Board may issue rules regarding permitted business activities. Leasing of a residence on a Lot shall not be considered a business or business activity. Except those to be utilized by Declarant as described hereinabove and, except in those areas of the Property designated by Declarant, in its sole and absolute discretion as being set aside for condominiums, townhomes, cluster houses or similar residential development, no structure shall be erected placed, altered, used or permitted to remain on any Lot other than one single-family Dwelling Unit and one attached or detached private garage for not less than two (2) vehicles, and only such accessory structures as are approved in advance in writing by the Architectural Control Committee pursuant to the Architectural and Landscape Guidelines. No Lot and no Improvements may be used for hotel or other transient residential purposes. Each lease relating to any Lot or any Improvements thereon (or any part of either thereof) must be for a term of at least six (6) months, must be in writing, and must provide that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Dwelling Unit, Lot, Tract and/or Improvements.

Section 8.2. Building Envelopes. No building on any Lot (including any stoops or porches, patios, decks, terraces, etc.) and no swimming pool or tennis court on any Lot shall be erected or permitted to remain outside of the "Building Envelope" for that particular Lot as established by the Architectural Control Committee (as to each Lot, the "Building Envelope"). The Building Envelope shall be the set back lines approved for any Lot and will be available from the Architectural Control Committee on an unrecorded map. The Architectural Control Committee shall have the right in its sole discretion to make exceptions to any Building Envelope to recognize any special topography, vegetation, Lot shape or dimension, or other site-related conditions. In the event any zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of such requirements shall conform thereto. Notwithstanding the foregoing, the Building Envelope shall not allow improvements within the Golf Easement Area.

Section 8.3. Dwelling Unit Size. Except in those areas of the Property designated by Declarant, in its sole and absolute discretion as being set aside for condominiums, townhomes, cluster houses or similar residential development, the square footage requirements set forth below shall be required. These requirements shall be for enclosed heated floor area and are exclusive of the areas in heated or unheated basements, vaulted ceiling areas and alleys, unheated porches of any type, attached or detached garages, porches and unheated storage areas, decks and patios.

Except as otherwise provided herein, every single family detached Dwelling Unit erected upon any Lot shall contain not less than the following heated floor areas:

	<u>Minimum Total Heated Area</u>	<u>Minimum Ground Floor Heated Area</u>
One (1) story	1,700 square feet	1,700 square feet
	<u>Minimum Total Heated Area</u>	<u>Minimum Ground Floor Heated Area</u>
Two (2) story and two and one-half (2-1/2) stories	2,000 square feet	1,500 square feet

Notwithstanding the foregoing requirements, the Architectural Control Committee shall have the right (but not the obligation), because of restrictive topography, Lot dimensions, unusual site related conditions, or other reasons, to allow variances from such minimum square footage requirements of up to ten percent (10%) of such minimum square footage requirements by granting a specific written variance.

Section 8.4. Dwelling Unit Height. No Dwelling Unit erected upon a Lot shall contain more than two and one-half (2-1/2) stories above ground level; provided, however, the Architectural Control Committee shall have the right (but not the obligation), because of steep topography, unique Lot configuration or similar reasons, to allow Dwelling Unit heights greater than two and one-half (2-1/2) stories on rear and side elevations.

Section 8.5. HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any Dwelling Unit on a Lot. Additionally, air conditioning and heating equipment and apparatus on each Lot shall be screened from view from Roadways and as provided in the Architectural and Landscape Guidelines.

Section 8.6. Exterior Lighting. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Architectural and Landscape Guidelines. Night lighting of tennis courts and other recreational facilities on Lots is not permitted.

Section 8.7. Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration, no fence or wall (including densely planted hedges, rows or similar landscape barriers) (i) shall be erected, placed, maintained or altered on any Lot nearer to any Roadway fronting such



Lot than the front building corner of the main Dwelling Unit constructed on such Lot (unless otherwise approved by the Architectural Control Committee) and (ii) shall not exceed six (6) feet in height, except that fences enclosing approved tennis courts may be up to ten (10) feet in height if located at least twenty-five (25) feet from all Lot boundary lines. All fences and walls shall be maintained in a structurally sound and attractive manner. No fence or wall shall be erected on any Lot until the Architectural Control Committee has given its prior written approval of the color, size, design, materials and location for such fence or wall. No fence may be installed in any Golf Course Easement Area.

Section 8.8. Mail and Newspaper Boxes: House Numbers. Declarant shall approve a standard mailbox/newspaper box for each Owner's use on each Owner's Lot. No other mailbox or newspaper box shall be erected or maintained on any Lot. The location of the mailbox/newspaper box on a Lot must be approved in writing by the Architectural Control Committee. House numbers may be displayed on the Dwelling Unit and/or mailbox only as approved by the Architectural Control Committee.

Section 8.9. Animals. No animals, livestock or poultry shall be raised, bred or kept on any portion of the Property except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage, potential injury to persons, or destruction of property. The number of household pets kept or maintained outside the Dwelling Unit on a Lot shall not exceed three (3) in number, except for newborn offspring of such household pets which are all under three (3) months of age. Dogs shall at all times whenever they are outside of a Dwelling Unit, be on a leash or otherwise confined in a manner acceptable to the Board. Animal control authorities shall be permitted to enter the Project and the Property to patrol and remove pets and wild animals. All pets shall be registered, licensed and inoculated as required by law. No fenced dog enclosure or other structure for pets may be constructed or maintained on any Lot unless the same has been approved in writing by the Architectural Control Committee.

Section 8.10. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. During construction of Improvements on a Lot, all rubbish and debris shall be stored and disposed of in accordance with the rules and regulations established by the Architectural Control Committee.

Section 8.11. No Temporary Structures: Structure Materials. No residence or building of a temporary nature, including a construction trailer, shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic or canvas structure shall be erected on any Lot or attached to any residence; provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used for storage or for construction or sales offices.

Section 8.12. Sight Line Limitations. To the extent that governmental requirements shall not impose a stricter standard, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above Roadways shall be placed or permitted to remain on any corner Lot within the triangular areas shown on the Plat as "Sight Triangles. The same sight

line limitations shall apply on any Lot within the triangular area formed by (i) the line that runs from the point of intersection of (a) the edge of a Roadway's pavement and (b) the edge of the pavement of the driveway on such Lot for a distance of ten (10) feet along such Roadway pavement away from such driveway pavement, (ii) the line that runs from said point of intersection for a distance of ten (10) feet along such driveway pavement away from such Roadway pavement, and (iii) the straight line that connects the ending points of the lines described in the foregoing clauses; (i) and (ii). No tree shall be permitted to remain within such triangular areas unless the foliage line is maintained at an appropriate height to prevent obstruction of sight lines.

Section 8.13. Utilities. All utilities and utility connections shall be located underground including but not limited to electrical and telephone cables and wires. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Lots or, if approved by the Architectural Control Committee in writing, located elsewhere on the Lot provided they are adequately screened as required by the Architectural Control Committee in accordance with the provisions of this Declaration.

Section 8.14. No Clothes Lines. No clothes lines of any description or type, and no outside drying of clothes, shall be allowed on any Lot.

Section 8.15. Sediment Control. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm water inlet protection and temporary seeding, in accordance with all applicable local, state, and federal regulations and to the extent deemed reasonably necessary by Declarant or the Architectural Control Committee, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion. All golf course lots must have silt control in place along the Golf Course during construction.

Section 8.16. Combination or Subdivision of Lots. Should the Owner of a Lot own an adjacent Lot(s) and desire that two (2) or more such Lots be considered as one (1) Lot, then such Lots shall be considered as one (1) Lot for the purposes of this Article VIII upon the recordation with the Clerk of the Superior Court of Union County, Georgia, of an instrument by such Owner expressing such intent (such instrument to refer specifically to this section in this Declaration and to identify the Lots to be considered as one Lot for purposes of this Article VII and a copy of such recorded instrument shall be promptly delivered by such Owner to the Architectural Control Committee); and in each such case, Building Envelopes, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by the Architectural Control Committee. No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant; provided, however, Declarant reserves the right to change the size, boundaries or dimensions of any Lot owned by Declarant for any reason. Notwithstanding anything to the contrary contained herein, if two (2) or more such Lots shall be considered as one (1) Lot pursuant to this Section 8.16, the Association (or its designated third party agent, if applicable) may, in its discretion charge Assessments to the Owner based upon the original number of Lots prior to their combination.

Section 8.17. No Wells. No well or individual water supply system shall be installed, used or

maintained on any Lot for human domestic water consumption nor shall any well be connected in any manner whatsoever to the water mains, laterals or piping serving the Dwelling Unit which furnish domestic water from sources beyond the boundary lines of the Lot.

Section 8.18. Power Equipment. The use of motorized lawn mowers, lawn tractors, grass trimmers, garden tillers, chain saws and other motorized (including, but not limited to, electric and gasoline-powered engines) lawn and garden maintenance equipment shall be prohibited before 8:00 a.m. and after 8:00 p.m.

Section 8.19. Hoses, Pipes and Cables. Except for the temporary use of hoses and the like which are reasonably necessary in connection with normal lawn care, no hose, water pipe, sewer pipe, gas pipe, drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground, unless such installation is expressly approved by the Architectural Control Committee.

Section 8.20. Recreational and Other Equipment.

(a) No recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be attached to the exterior of any Dwelling Unit or otherwise placed or kept on any Lot, except in accordance with the requirements as set forth in the Architectural and Landscape Guidelines and not within the Golf Easement Area.

(b) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition to adjoining Owners or to persons using the Golf Course.

(c) No such recreational equipment shall be located within fifty (50) feet of the Golf Course, including the Golf Course Easement Area.

(d) Children's play toys and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall not remain overnight within any front yard of any Lot, or within the side yards of any Lot located on a Roadway corner, in such number or for such a long period of time as to create a continuing, unsightly condition.

(e) No all-terrain vehicles which are not designed for common use on streets in Georgia, nor any motorbikes or mopeds shall be driven on the Roadways, Golf Course or sidewalks of the Project; provided, however, that the Roadways may be used for the ingress and egress of motorcycles to and from each Dwelling Unit, and/or the Golf Course to public roads outside the Property.

Section 8.21. Vegetable Gardens. Vegetable gardens shall not be permitted on any Lot unless approved by the ARB and are placed in the rear portion of such Lot in such a manner as not to constitute a nuisance or unsightly condition to any adjoining Owners or to persons using the Golf

Course. In no event shall any vegetable garden be located within fifty (50) feet of the Golf Course including the Golf Course Easement Area.

Section 8.22. Lawn Furniture and Statues. No lawn furniture or decorative items, such as statuettes or renderings of animate or inanimate objects, shall be maintained in the front or side yards of any Lot unless shielded from view by landscaping, a fence or a wall approved in advance in writing by the Architectural Control Committee. In no event shall any lawn furniture or decorative items be located within fifty (50) feet of the Golf Course, including the Golf Course Easement Area.

Section 8.23. Window Coverings. Bedding materials, plastic sheets, towels or other similar non-standard window treatments shall not be hung or placed in or on any window on any Dwelling Unit located on any Lot, except on a short-term, temporary basis.

Section 8.24. Restricted Activities in Common Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas or Maintenance Areas. There shall be no obstruction of the Common Area or Maintenance Areas, nor shall anything be kept or stored in the Common Areas or Maintenance Areas, nor shall anything be altered, or constructed or planted in, or removed from, the Common Areas or Maintenance Areas, without the prior written consent of the Association. Each Owner or Occupant shall be liable to the Association and Declarant for any damage to any Common Area and/or Maintenance Area caused by the negligence or willful misconduct of the Owner or Occupant or his family, tenants, guests, agents, employees, or invitees; provided, however, the provisions of this Section 8.24 shall not apply to Declarant in connection with Declarant's construction activities on the Property.

Section 8.25. Restricted Activities Regarding Lakes and Ponds. The Property may contain one or more lakes or ponds which may or may not be Common Area. With respect to construction of any Improvements on any Lots that are adjacent to a lake or pond, a silt fence or barrier shall be placed and maintained across each such Lot during the construction of any Improvements thereon in such manner as to protect the lake or pond from soil erosion and silt. Such fence or barrier shall be constructed prior to the commencement of any construction of Improvements, including clearing or grading, and shall remain in place until such time as the said Lot has been landscaped or stabilized in a manner that will protect the lake or pond from soil erosion and silt. No pesticides or other toxic, hazardous or harmful chemicals shall be used for any purposes whatsoever within thirty (30) feet of any lake or pond (this prohibition shall not apply to the maintenance of the Golf Course). Any such chemicals used or applied more than thirty (30) feet from any lake or pond shall be used or applied so as to prevent the spread or dissemination of such chemicals into the lake or pond. No piers, jetties, docks, boat houses, storage facilities or other similar structures shall be constructed or located on or in any portion of any lake or pond. No boats or other floating vessels shall be permitted in or on any portion of any lake or pond other than non-motorized canoes or kayaks with a capacity of no more than two (2) people. No Person shall be allowed to swim or engage in related water sports activities within any lake or pond.

Section 8.26. Signs. No sign of any kind shall be displayed on any Lot or Tract except for sign(s) provided by Declarant or approved in writing by the Architectural Control Committee. The Architectural Control Committee shall have the power, but not the obligation, to adopt and issue from time to time sign guidelines, as part of the Architectural and Landscape Guidelines, to assist the

Architectural Control Committee in reviewing and approving proposed signs to be erected on the Property; provided, however, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property, the Project or portions of either thereof, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas and Maintenance Areas, or to restrict or prohibit the Association or any other Association from posting (a) temporary signs in the Maintenance Areas and Common Areas which reference Golf Course related activities or (b) permanent signs designed to aid in vehicular access and related information, or to restrict or prohibit the Golf Course Owner from erecting and maintaining temporary signs and billboards on the Property owned by Declarant or in the Common Areas and Maintenance Areas for the purpose of advertising or providing directions to or information about any golf tournament on the Golf Course.

Section 8.27. Nuisances. It shall be the responsibility of each Owner and Occupant of a Dwelling Unit, Lot or Tract to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No Dwelling Unit, Lot or Tract within the Project shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within any Dwelling Unit, Lot or Tract, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Project. There shall not be maintained on any Dwelling Unit, Lot or Tract any plants or animals or device or thing of any sort whose activity or existence in anyway is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Dwelling Unit, Lot or Tract unless required by law.

Section 8.28. Other Unsightly or Unkempt Conditions. 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, shall not be pursued or undertaken on any Lot or Tract, other than in enclosed garages.

Section 8.29. Rules of the Board. All Owners and Occupants of any Dwelling Unit, Lot, Tract or other portion of the Property shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner or Occupant determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or Declarant for all damages and costs, including attorneys fees.

Section 8.30. New Construction. Construction of new buildings only shall be permitted on Lots and Tracts, it being the intent of this covenant to prohibit the moving of any existing new or used building onto a Lot or Tract; provided, however, nothing herein shall prohibit Declarant from moving an existing new or used building onto a Lot or Tract to be used for storage or for use as construction

or sales offices.

Section 8.31. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot or Tract must be continued with reasonable diligence to completion, and no partially completed Dwelling Units or other Improvements shall be permitted to exist on any Lot or Tract, except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the Architectural Control Committee. Any damage to the Roadways, curbs, sidewalks, pathways, trails or any part of any Common Area, Maintenance Area, or any utility system caused by an Owner or Owner's builder or his or her subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and his subcontractors on any portion of the Property shall keep such portion of the Property free of unsightly construction debris in accordance with the construction rules established by the Architectural Control Committee (or, in the absence of such rules, in accordance with standard construction practices), and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in the Project to pay for the cost of repairing any damage to Roadways, curbs, sidewalks, pathways, trails or any part of any Roadway, Common Area, Maintenance Area or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Project, and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or his or her subcontractors during the construction of Improvements.

Section 8.32. Parking.

(a) No trucks, vans, cars, trailers, construction equipment or other vehicles or equipment may be parked overnight on any roadway within the Property other than at the Golf Course.

(b) Commercial use vehicles and trucks not involved with construction activity on the Property with carrying capacity and/or size designation greater than one (1) ton shall not be permitted to park overnight on the Roadways, driveways or otherwise within the Property, unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage.

(c) The Owner of each Lot will be responsible for providing on such Owner's Lot a sufficient paved parking area of concrete or decorative stone or brick materials for all vehicles normally parked and/or situated on or in regard to such Lot.

(d) No recreational vehicles or related equipment, including any boat, houseboat, trailer, motor home or camper vehicle may be maintained, stored or kept on any portion of the Property, except in enclosed garages or in an enclosure specifically approved for such maintenance or storage by the Architectural Control Committee. Garage doors on Lots must be kept closed except when such doors or the garage are in use for entrance and exit. Vehicles must be parked inside garages on Lots except when reasonably impractical.

(e) All vehicles must be parked on Lots so as not to impede traffic or damage vegetation.

(f) No construction office trailers may be placed, erected or allowed to remain on any Lots during construction, except as approved in writing by the Architectural Control Committee; provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used as construction or sales offices. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the Architectural Control Committee.

Section 8.33. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances) and other governmental rules and restrictions in regard to the Lot(s), Tract(s) or other portion of the Property owned by such Owner.

Section 8.34. Occupants Bound. All provisions of this Declaration, any Additional Declaration, any Supplemental Declaration, and the Bylaws and any and all rules and regulations, use restrictions or Architectural and Landscape Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

Section 8.35. Building Materials and Plans. No vinyl siding may be used in the construction of any dwelling and all plans, exterior elevations, color schemes and materials used in construction of any dwelling must be approved by Declarant thirty (30) days prior to construction. No front elevation may be repeated for four (4) dwellings on either side of a particular elevation.

Section 8.36. Rear Decks and Porches. All rear decks and porches on a Lot must be painted or stained in accordance with guidelines established by the Architectural Control Committee.

Section 8.37. Garage Conversion. No garage may be converted to living space.

Section 8.38. Pets. The ownership and maintenance of pets by Owners within the Property shall be in compliance with all applicable local laws, ordinances, rules and regulations and such other applicable rules and regulations as may be promulgated from time to time by the Board. Without limitation, each pet within the Property shall be kept on a leash whenever such pet is not on its owner's property and shall be kept off the Golf Course at all times.

## ARTICLE IX

### ARCHITECTURAL AND LANDSCAPING CONTROL

Section 9.1. General. Notwithstanding anything contained in this Declaration to the contrary, no

Improvements (as defined in Section 9.4), including, without limitation, site preparation on any Lot or Tract, change in grade or slope of any Lot or Tract, or erection of buildings or exterior additions or alterations to any building situated upon any Lot or Tract, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot or Tract, shall be commenced, erected or maintained on any portion of any Lot or Tract, subject to the provisions of Section 9.7 hereof, until: (a) the Architectural Control Committee, appointed as hereinafter provided, has approved the plans and specifications therefore, the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Architectural and Landscape Guidelines; (b) the fees set forth in or contemplated in this Article IX have been paid; and (c) the contracts identified in this Article IX have been executed in addition to any standards established (i) pursuant to this Declaration, (ii) by Declarant (iii) by Additional Declarations, (iv) by architectural and landscaping control standards, guidelines, and (v) by restrictions in regard to various Phases or sections of the Property. The provisions of this Article IX shall not apply to the construction of any Improvements commenced, erected or maintained upon any of the Common Areas or Maintenance Areas, or the Declarant.

The Board may delegate to the Architectural Control Committee any powers or authority reserved or granted to the Board under this Article IX.

Section 9.2. Composition of Architectural Control Committee. So long as Declarant owns any Lot, Tract or other portion of the Property, the members of the Architectural Control Committee shall be appointed by Declarant. At such time as Declarant no longer owns any Lot, Tract or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the Architectural Control Committee, the members of the Architectural Control Committee shall thereafter be appointed by the Board. The members of the Architectural Control Committee shall be appointed annually and will be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the Architectural Control Committee to be designated from time to time by the body then having the authority to appoint such members (Declarant or the Board, as the case may be). The members of the Architectural Control Committee need not be Owners of property in the Project. In the event of the death or resignation of any member of the Architectural Control Committee, the party or body then having the authority to appoint members to the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. Notwithstanding anything contained herein to the contrary, the Architectural Control Committee shall have the right, power and authority to employ and/or use the services of any related or third party architects, engineers or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Control Committee as described in this Article IX and shall have the right to charge a reasonable fee from any appropriate Person for such services, as set forth in Section 9.8 hereof.

Section 9.3. Architectural and Landscape Guidelines.

(a) The Architectural Control Committee shall, from time to time, publish and promulgate architectural and design guidelines (the "Architectural and Design Guidelines"). The



Architectural and Design Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for Improvements (excluding only landscape Improvements, which are addressed in Section 9.3(b) hereof). The Architectural and Design Guidelines shall also set out, among other things, the procedures, for submission, review and approval of plans and specifications (for the construction of non-landscape Improvements) to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in Section 9.8 hereof. In any event, the Architectural and Design Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of non-landscape Improvements) submitted to the Architectural Control Committee for approval.

(b) The Architectural Control Committee shall, from time to time, publish and promulgate landscape guidelines (the "Landscape Guidelines"). The Landscape Guidelines shall be explanatory and illustrative of the general intent of the landscape development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for landscape Improvements. The Landscape Guidelines shall also set out, among other things, the procedures for submission, review and approval of landscape plans and specifications to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in Section 9.8 hereof. In addition, The Landscape Guidelines shall establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees. Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval of the Architectural Control Committee of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot, Tract or other portion of the Property shall be based upon the conformity of such plan or improvement with the Landscape Guidelines. In any event, the Landscape Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of landscaping plans, specifications and other materials submitted to the Architectural Control Committee for approval.

(c) The Architectural Control Committee is also hereby authorized to publish and promulgate, from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

(d) The Architectural and Design Guidelines described in Section 9.3(a) hereof, the Landscape Guidelines described in Section 9.3(b) hereof and the construction rules described in Section 9.3(c) hereof shall herein collectively be referred to as the "Architectural and Landscape Guidelines." The Architectural Control Committee may issue and amend the Architectural and Landscape Guidelines from time to time and may publish and promulgate different Architectural and Landscape Guidelines for different Phases, sections or portions of the Property.

Section 9.4. Definition of "Improvements. The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot or Tract, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; roofed structures; parking areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings; poles; driveways; ponds; lakes; changes in grade or slope; site preparation; swimming pools; hot tubs; jacuzzis; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Control Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Control Committee.

Section 9.5. Enforcement.

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any Additional Declarations are to permit control of the architectural design and landscaping, and to establish quality standards for construction and construction activity in the Project and to help preserve values of properties in the Project. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Project and to Declarant, and to the values of their respective properties in the Project, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Architectural Control Committee, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Architectural Control Committee or the Board whether there exists any construction of any Improvement which violates the terms of any approval by the Architectural Control Committee, the terms of the Architectural and Landscape Guidelines, the terms of this Declaration or any Additional Declaration, or the terms of any amendments hereto or thereto.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvements) if such Improvements were constructed in violation of this Article. In addition, the Association, may, but has no obligation to, have such restoration, demolition and removal to be performed and may levy the amount of the cost thereof as a Special Individual Assessment against the Lot, Tract or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Architectural and Landscape Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association and/or the Architectural Control Committee

in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot, Tract or other portion of the Property upon which such Improvement was commenced or constructed.

Section 9.6. Failure of the Architectural Control Committee to Act. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof and of the Architectural and Landscape Guidelines or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittals were full and complete submittals, in accordance with the Architectural and Landscape Guidelines, of all items that were to have been submitted to the Architectural Control Committee, and provided the Architectural Control Committee shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) days after additional written request to act on such items is delivered to the Architectural Control Committee following the passage of such first above-described thirty (30) business day period, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals, except that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration or any Additional Declaration, and except further, that the Architectural Control Committee shall not be deemed to have waived any of the requirements set forth in Section 9.8, Section 9.9 or Section 9.10 hereof. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove any part thereof, conditionally or unconditionally, and reject or approve the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

Section 9.7. Variances. Upon submission of a written request for same, the Architectural Control Committee may, from time to time, in its reasonable discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Architectural Control Committee has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration against any other Owner.

Section 9.8. Fees Required by the Architectural Control Committee. The Architectural Control Committee, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Architectural Control Committee pay one or more fees to the Architectural Control Committee or to Declarant, or to any designee of the Architectural Control Committee or

Declarant, as a condition to commencement of construction of such Improvements. The Architectural Control Committee, in its sole discretion, may also require that each Person pay a deposit for trash clean-up and landscape maintenance. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by, the Architectural Control Committee

Section 9.9. View of Golf Course. The view of the Golf Course from Lots, Tracts and Dwelling Units on Lots may be impaired by scoreboards, tents and other temporary or permanent obstructions or structures installed or erected within the boundaries of the Golf Course in connection with Golf Tournaments and other uses of the Golf Course . No Owner shall be entitled to assert any claim or to bring any action relative to any such impairment of view of the Golf Course.

Section 9.10. Notices and Submittals. Notices and submittals to the Architectural Control Committee shall be in accordance with the notice provisions set forth from time to time in the Architectural and Landscape Guidelines.

Section 9.11. Intentionally Deleted.

Section 9.12. Limitation of Liability. No member of the Architectural Control Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article IX. Neither the Architectural Control Committee, nor the members thereof, nor the Association, nor any other Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the Architectural Control Committee shall not be deemed or construed as a representation or warranty of the Architectural Control Committee, Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefor is hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against Declarant, the Association, any other Association, the Architectural Control Committee, the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 9.13. Miscellaneous. Members of the Architectural Control Committee and, if applicable, the

Architectural Changes Committee, in the sole discretion of the party or body appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the Architectural Control Committee and the Architectural Changes Committee (if applicable) for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys fees of the Architectural Control Committee and the Architectural Changes Committee (if applicable), including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorney's fees and expenses in accordance with Section 9.5 hereof.

## ARTICLE X

### EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted or reserved herein, hereby reserves unto itself, its successors and assigns, and grants to the Association and any other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. In addition Declarant hereby reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Project, including, but not limited to, easements in favor of Declarant, the Association, other, if any, Associations, the Golf Course and the Golf Course Owner, any designees of the foregoing, the Owners, and all their family members, guests, invitees and lessees and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.

Section 10.1. Easements and Cross-Easements on Common Areas. Declarant, for itself, its designees, and the Association, reserves the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, lake maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Project or any portion thereof.

Section 10.2. Use of Common Areas. Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Associations, the Owners and all their family members, guests, invitees and lessees, and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration and any Additional Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 10.3. Right-of-Way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, the Associations, the Golf Course Owner, their agents, employees, lessees, invitees, designees, successors and assigns, and to each Owner of a Dwelling Unit, Lot or Tract, their family members, guests, invitees, successors and assigns, and to each Occupant of a Dwelling Unit, Lot or Tract, and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the various areas of the Property. The Golf Course Owner, its agents, employees, lessees, invitees, designees, successors and assigns, shall have no obligation to contribute to the maintenance of the Roadways in exchange for the rights granted them herein.

Section 10.4. Right of the Association and Declarant to Enter Upon the Common Areas and Maintenance Areas. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association, and all agents, employees or other designees of Declarant, the Association an easement for ingress, egress and access to enter upon or over the Common Areas and Maintenance Areas for the purposes of inspecting any construction, proposed construction, or Improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant, and the Association. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas and Maintenance Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter designated or as Declarant otherwise determines them to be reasonably suited.

Section 10.5. Easement for Encroachments. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, any other Associations, the Owners, their successors and assigns, and to the Occupants of Dwelling Units, Lots or Tracts, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Associations, the Owners and all their designees.

Section 10.6. Easements for Errant Golf Balls; Limitation of Liability. Every Dwelling Unit, Lot, Tract, Common Area and all other portions of the Property are hereby burdened with an easement in favor of any golfer at the Golf Course for the purpose of retrieving errant golf balls. The Association shall not be responsible or liable in any way for any disputes between an Owner and any person using the Golf Course. All Owners, by acceptance of delivery of a deed to the respective Dwelling Unit, Lot, Tract or other portion of the Property, for themselves, their contractors, subcontractors, guests and invitees, successors in interest and assigns, assume all risks associated with errant golf balls, and all Owners agree and covenant for themselves, their contractors, subcontractors, guests and invitees, successors in interest and assigns, not to make any claim or institute any action whatsoever against Declarant, the Association, or any officers, director, employees, agents or affiliates of any of them, or their respective assigns, arising or resulting from any errant golf balls or any damages that

may be caused thereby.

Section 10.7. Maintenance Areas. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, their successors and assigns, the following nonexclusive perpetual easements over certain areas of the Property as hereinafter described for the purposes hereinafter described:

(i) Easements for the purposes of landscaping and maintaining entry ways and erecting and maintaining entrance monument(s) for the Project, over, across and under those portions of the Property shown and designated as "Entry Easement" on the Plats (herein referred to as the "Entrance Monument Easements"). Declarant and/or the Association shall have the right to landscape and maintain the areas of the Property so designated as entry ways to the Project, to erect and maintain entrance monument(s) thereon bearing the name of the Project, and to erect and maintain lighting for such monument(s), plantings, landscaping, irrigation systems and other improvements typically used for entry ways.

(ii) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, monuments and irrigation systems, over, across and under those portions of the Property shown and designated as "Landscape Easements" on the Plats (herein referred to as "Landscape Easements").

(iii) Easements for the installation, maintenance, repair and removal of Roadways, street lights, sidewalks, pathways and trails, over, across and under those portions of the Property shown and designated as "Roadway Easements," "Sidewalk Easements," "Pathway Easements" and "Trail Easements," as appropriate, on the Plat (herein referred to as the "Roadway Easements," "Sidewalk Easements," "Pathway Easements" and "Trail Easements," as appropriate).

All of the above-described areas and items shall herein be referred to as the "Maintenance Areas". The Association shall maintain the Maintenance Areas to a consistent standard of maintenance typical of a first-class development.

Section 10.8. Easements for Common Driveways. Certain groups of Lots in the Project may be served by Common Driveways, as herein defined, which will run over and across certain areas of the Property as hereinafter described. The Lots which are part of a group which will be served by a Common Driveway and are therefore subject to the provisions of this Section 10.9 may be specified in Additional Declarations for the Phases in which such Lots are located; provided, however, the Owners of certain Lots shall have the right, but not the obligation, to have such Lots be served by a Common Driveway and therefore included within the designated group of Lots using such Common Driveway, which Lots may also be specified in Additional Declarations for the Phases in which such Lots are located and which Lots may herein be referred to as "Optional Lots." All Lots served by one Common Driveway, including those Optional Lots whose Owners have chosen to be served by such Common Driveway, shall herein be referred to as a "Group."

Declarant hereby reserves, for the benefit of itself, its agents, employees, designees, successors and assigns, and grants to the Association, its agents, employees, designees, successors and assigns, and to each Owner of a Lot in a particular Group, their successors and assigns, a

perpetual non-exclusive easement over, across and under the area of the Property shown and designated as "Common Driveway and Utility Easement" (herein referred to as such) on the Plat of such Group and running to such particular Group. The above-described easement is hereby reserved and granted for the purposes of (a) paving, maintaining and repairing a Common Driveway to be erected on such easement area (the "Common Driveway"), and (b) laying, maintaining, repairing and replacing utility lines over, under and across such easement area, which non-exclusive easement shall include the right to go upon such easement area and any portion of the Property in the area of or adjacent to such easement area necessary to perform such work; provided, however, and notwithstanding the foregoing, no utility lines or equipment shall be placed or maintained within the Common Driveway area without the express prior written approval of the Architectural Control Committee, and absent such approval, utility lines servicing the Common Drive Lots shall access those Lots exclusively from publicly dedicated rights-of-way. In addition, Declarant hereby grants to each Owner of a Lot in a Group, their successors and assigns, a perpetual, non-exclusive easement over and across any areas of the Property necessary for such Owner to tie his Lot into the Common Driveway and Utility Easement serving his Lot (the "Tie-In Easement"), which Tie-In Easement may also be used for the above-described purposes.

Declarant hereby reserves, for the benefit of itself, its agents, employees, designees, successors and assigns, and grants to the Association, its agents, employees, designees, successors and assigns, and to each Owner of a Lot in a particular Group, their family members, guests, invitees, successors and assigns, and to each Occupant of a Lot in a particular Group, a perpetual, non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the above-described Common Driveway and Utility Easement serving such Group, and over and across any Tie-In Easement necessary, for the purpose of providing access, ingress and egress to and from the Lots in such Group.

Any Owner or Occupant of a Lot within a Group may and must use only the Common Driveway and Utility Easement serving such Group and the Roadways as its means of access to a public Roadway. Within the Common Driveway and Utility Easements and the Tie-In Easements, no structure, planting or other material shall be placed or permitted to remain which could interfere with the use of the Common Driveway and Utility Easements and the Tie-In Easements for the above-stated purposes.

The Owner of each Lot within a Group shall pay for its attributable share of the construction of that Group's Common Driveway in accordance with the provisions of the Architectural and Landscape Guidelines.

Each Common Drive Lot shall face the Roadway (and not the Common Driveway) directly adjacent to such Lot.

Each Owner of a Common Drive Lot shall pay annually to the Association, within ten (10) days of the Board sending notice thereof to Owner, an amount (the "Common Drive Reserve Assessment") to be held in escrow and used by the Board to pay for maintenance and repair of the Common Driveway. The Common Drive Reserve Assessment shall be set annually by the Board in its discretion. If at any time the amount in reserve is insufficient for the Board's then contemplated or actual expenses for repair or maintenance of the Common Drive, the Board may make a Special



Assessment as to the Owners of Common Drive Lots pursuant to the provisions of Section 4.6 of this Declaration to pay for such repair or maintenance and replenish the reserve.

The Owner of each Lot in a Group shall have the right to lay, maintain, repair and replace within the Common Driveway and Utility Easement, and within any Tie-In Easement as necessary, utility lines servicing its Lot, provided, that any such work shall be carried out in such a way so as not to interfere with the other Owners' reasonable use of the Common Driveway, and, provided further, that any Owner performing such work and causing disturbance to the pavement, concrete, landscaping or other features of the Common Driveway and Utility Easement, or to other property in the Project, shall repair the same to its condition prior to such work.

Section 10.9. Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Plats, including, but not limited to, those certain easements shown and designated on the Plats as:

- (a) "Utility Easement";
- (b) "Public Storm Drainage Easement";
- (c) "Sanitary Sewer Easement"; and
- (d) "Sanitary Sewer Right-of-Way."

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, their successors and assigns. Additionally, Declarant hereby reserves, for the benefit of itself, its members, guests, invitees, successors and assigns, and grants to the Association, their successors and assigns, a non-exclusive easement and right-of-way over, under and along (a) a ten (10) foot strip of land adjacent to the front, side and rear boundary lines of all Lots within the Property and (b) all Landscape Easements, for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, sanitary sewer and drainage facilities, storm drainage and other utilities. Within the above-described easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easements.

Section 10.10. Irrigation Easements. Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, the Golf Course Owner and their successors and assigns, nonexclusive perpetual easements over, across and under those portions of the Property shown and designated as "Irrigation Easement" on the Plats for the installation, maintenance, repair and removal of irrigation systems to service the landscaping to be installed and maintained in the Landscape Easement areas (herein referred to as the "Irrigation Easements"). Within the irrigation Easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, repair and maintenance of irrigation systems. This reservation of easements shall not prohibit the construction of driveways, at locations approved by

the Architectural Control Committee, over such easements.

Section 10.11. Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any Improvements in such areas, which are not to be maintained by the Association, another Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Declarant and/or the Association may exercise the rights reserved in Section 11.2 hereof for the purpose of enforcing the provisions of this Section 10.11 Notwithstanding the above, the Association, another Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot or Tract.

Section 10.12. Easement Reserved for the Association and Declarant. Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article X as well as the maintenance and repair rights described in Article XI below and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be.

Section 10.13. Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas and Maintenance Area, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Project, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Association Members or Owners, including, without limitation, the Golf Course Owner, its successors and assigns. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant, for the development of the Project and the preservation and enhancement of Declarant's interest therein.

Section 10.14. No Merger of Easements. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

## ARTICLE XI

## MAINTENANCE BY OWNERS

Section 11.1. Duty of Maintenance. Except for those portions, if any, of a Dwelling Unit, Lot or Tract which the Association or an Association may elect to maintain or repair hereunder or under any applicable Additional Declaration, the Owner of any Dwelling Unit, Lot or Tract shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Dwelling Unit, Lot(s) or Tract(s) owned by such Owner, including Improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Additional Declaration, in accordance with the provisions of the Architectural and Landscape Guidelines, and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance, as to unimproved and improved Dwelling Units, Lots or Tracts, shall include, but shall not be limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and waste;
- (2) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
- (3) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
- (4) Complying with all governmental health and police requirements.

In addition, such maintenance, as to improved Dwelling Units, Lots or Tracts, shall include, but shall not be limited to the following:

- (1) Lawn mowing on a regular basis;
- (2) Tree and shrub pruning;
- (3) Watering by means of a lawn sprinkler system and/or hand watering as needed to the extent permitted by applicable laws, rules and regulations;
- (4) Keeping exterior lighting and mechanical facilities in working order;
- (5) Keeping lawn and garden areas alive;
- (6) Removing and replacing any dead plant material;
- (7) Maintenance of natural areas and landscaping in accordance with the Architectural and Landscape Guidelines;
- (8) Keeping parking areas and driveways in good repair;

(9) Timely repainting of Improvements; and

(10) Timely repair of damage and deterioration to Improvements, it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty, then within six (6) months following the date such damage or destruction occurs, the Owner of the Dwelling Unit, Lot or Tract on which such Improvements are situated, must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Architectural Control Committee; and otherwise in accordance with the terms and provisions of this Declaration and of each Additional Declaration applicable thereto) or remove such damaged Improvements and restore the Dwelling Unit, Lot or Tract to its condition existing prior to the construction of such Improvements.

Notwithstanding anything contained herein to the contrary, the above-described maintenance responsibilities as to any Dwelling Unit, Lot or Tract shall commence only upon a Plat showing such Dwelling Unit, Lot or Tract being recorded with the Clerk of the Superior Court of Union County, Georgia and upon the conveyance of such Dwelling Unit, Lot or Tract by Declarant.

Section 11.2. Enforcement. If an Owner of any Dwelling Unit, Lot or Tract has failed in any of the duties or responsibilities of such Owner as set forth in this Article XI then the Board and Declarant, jointly and severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in this Article XI; provided, however, this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently pursue the same. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property), acting through, its authorized agent or agents, jointly or severally, shall have the right and power to enter onto the premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Dwelling Unit, Lot or Tract on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association or Declarant in performing such work computed at the highest lawful rate as shall be permitted by law from the date(s) such amounts are expended until repayment to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and such Owner shall reimburse the Association or Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Association or Declarant, as the case may be, within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association or Declarant, the Association may impose a Special Individual Assessment against such Owner. Declarant has the right to assign to the Association the rights of Declarant under this Section 11.2.

## ARTICLE XII

## RIGHTS OF MORTGAGEES

Section 12.1. Rights of Mortgagees. Any Mortgagee, at such Mortgagee's written request given to the Association, shall have the following rights, to wit:

- (a) To be furnished at least one copy of the annual financial statement of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year;
- (b) To be given notice by the Association of the call of any meeting of the Association Members, and to designate a representative to attend all such meetings;
- (c) To be given prompt written notice of any delinquency in the payment of assessments or charges owed by an Owner of a Lot, Tract and/or Dwelling Unit subject to the Mortgage of such Mortgagee, where such delinquency has continued for a period of sixty (60) days, or notice of any other default under this Declaration, the Bylaws or any rules and regulations promulgated by the Association by any Owner owning a Lot, Tract or Dwelling Unit encumbered by a Mortgage held by the Mortgagee;
- (d) To be given prompt written notice of any casualty loss or loss by eminent domain or other taking of the Common Areas or any Lot, Tract or Dwelling Unit encumbered by a Mortgage held by the Mortgagee;
- (e) To be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (f) To be given prompt written notice of any eminent domain or condemnation proceeding affecting the Property.

Whenever any Mortgagee desires the provisions of this Section to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its then current address, identifying the property in the Project upon which any such Mortgagee holds any Mortgage or identifying any property in the Project owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it, which notice shall designate the place to which notices are to be given by the Association to such Mortgagee.

Section 12.2. Books and Records. Any Mortgagee will have the right to examine the books and records of the Association during any reasonable business hours.

Section 12.3 Payment of Taxes and Insurance Premiums. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Common Areas and/or Maintenance Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association, and the person, firms or corporations making such payments shall be owed immediate reimbursement therefor from the Association.

Section 12.4. Names and Addresses of Mortgagees. 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, Tract and/or Dwelling Unit.

Section 12.5. 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 Board's request.

Section 12.6. Assessment Lien Priority. Notwithstanding the rights of Mortgagees as set forth in this Article XII, nothing herein shall be construed as giving the lien of a Mortgage priority over an assessment lien as described in Section 4.11 hereof; provided, however, the Board shall have the power to subordinate such an assessment lien to the lien of any Mortgage in its sole discretion.

### ARTICLE XIII

INTENTIONALLY DELETED

### ARTICLE XIV

### MISCELLANEOUS PROVISIONS

Section 14.1. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner of a Dwelling Unit, Parcel or Lot in the Property and every Owner of any other portion of the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of twenty (20) years beginning on the date this Declaration is recorded with the Clerk of the Superior Court of Union County, Georgia. At the end of such twenty (20) year period, the easements, covenants, conditions and restrictions set forth herein shall automatically be extended for successive period(s) of twenty (20) additional years, unless prior to the expiration of a respective period, by two-thirds (2/3) vote of the Association Members, there shall be adopted a resolution to terminate these covenants and restrictions. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting. Pursuant to O.C.G.A. §44-5-60(d), to terminate these covenants and restrictions pursuant to this Section 15.1, said two-thirds (2/3) of the Association Members shall execute a document containing a legal description of the Property, a list of the names of all Owners of the Property, and a description of which covenants and restrictions shall be terminated, which may be incorporated by reference to another recorded document. By signing such document, each such Person shall verify that he or she is an Owner of Property affected by the covenant or restriction. Such document shall be recorded in the Office of the Clerk of the Superior Court of Union County, Georgia no sooner than but within two (2) years prior to the expiration of the initial twenty (20) year period or any subsequent twenty (20) year period. The Clerk of the Superior Court of Union County, Georgia shall index the document under the name of each record Owner appearing in the document. The foregoing shall not limit the right of Declarant to amend and/or supersede, in whole or in part,

the terms and provisions hereof, as such right in favor of Declarant is described in Section 15.2 below.

Section 14.2. Amendment. Subject to the limitations hereinafter contained, this Declaration shall be amended only by the agreement of Owners of Lots to which two-thirds (2/3) of the votes in the Association pertain; provided, however, that, during any such time as there shall exist an unexpired option to add any additional property to the Association or during any such time as the Declarant has the right to control the Association under this Declaration, the agreement shall be that of the Declarant and the Owners of Lots to which two-thirds (2/3) of the votes in the Association pertain, exclusive of any vote or votes appurtenant to any Lot or Lots then owned by the Declarant. Notwithstanding the above, during such time as the Declarant shall own at least one Lot primarily for the purpose of sale of such Lot, no amendment shall be made to the instrument without the written agreement of the Declarant if such amendment would impose a greater restriction on the use or development of the Lot or Lots owned by the Declarant. Any such vote shall be taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. Any amendment or modification upon which the vote of Association Members is required pursuant to this Section 14.2 shall become effective when an instrument executed by the Association Members voting for such amendment or modification is filed of record with the Clerk of the Superior Court of Union County, Georgia; provided, however, such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Section 14.2 Unless agreed upon by all Owners of Lots and the Mortgagees of all Lots, no amendment to this Declaration shall change the number of votes in the Association pertaining to any Lot or the liability for common expenses pertaining thereto. The approval of any proposed amendment by a Mortgagee shall be deemed implied and consented to if the Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the Mortgagee receives notice of the proposed amendment sent by certified mail, return receipt requested.

Section 14.3. Enforcement. The Association, an Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Additional Declaration. Enforcement of the controls, covenants, conditions, restrictions easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association, an Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof. The prevailing party in any motion at law or in equity instituted by the Association or any other Association to enforce or interpret the limitations, restrictions, conditions or covenants herein shall be entitled to all costs incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

Section 14.4. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 14.5. Notice. Except as otherwise set forth herein expressly, whenever written notice to an Owner, Association Member or Member (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner, Association Member or Member appearing on the records of Declarant, the Association or any other Association of which such Owner is a Member. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not.

Section 14.6. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 14.7. No Exemption. No Owner or other party may exempt themselves from the coverage hereof or obligations imposed hereby by non-use of such Owner's Dwelling Unit(s), Lot(s) or other property located within the Project or the Common Area.

Section 14.8. Changes to Plans for the Project. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Project, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration, reserves the right to change any plans for the Project at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions, and any plans for the Project shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration.

Section 14.9. Delegation of Powers, Duties and Authority of the Board. In addition to any references contained in any specific sections of this Declaration to the delegation by the Board of its powers, duties and authority hereunder, the Board generally shall have the right to delegate any of its powers, duties and authority hereunder to any related or third party agent, as the Board, in its sole discretion, deems reasonable, necessary, or desirable.

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



(Signatures On Next Page)

Signed, sealed and delivered in  
the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
Commission Expires:

[NOTARY SEAL]

**Owen Glen, Inc.**

By: \_\_\_\_\_  
its: \_\_\_\_\_

Attest: \_\_\_\_\_  
its: \_\_\_\_\_

[COMPANY SEAL]