



## 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.

**Written Consent Form to Amend the  
Declaration of Covenants, Conditions, and Restrictions  
for Crown Mountain Swim and Tennis Club**

The Declarant and Board of Directors for the Crown Mountain Swim and Tennis Club Association proposes the following amendments to the Declaration of Covenants, Conditions, and Restrictions for Crown Mountain Swim and Tennis Club:

1. The name of the community is changed from Crown Mountain Swim and Tennis Club to The Overlook at Crown Mountain.

2. Section 1.3 of the Declaration is deleted in its entirety and replaced with the following provision:

1.3 "Articles of Incorporation" or "Articles": The Articles of Incorporation of The Overlook at Crown Mountain, Inc., as filed with the Secretary of State of the State of Georgia.

3. Section 1.4 of the Declaration is deleted in its entirety and replaced with the following provision:

1.4 "Association": The Overlook at Crown Mountain, Inc., a Georgia nonprofit corporation, its successors or assigns.

4. Section 1.7 of the Declaration is deleted in its entirety and replaced with the following provision:

1.7 "Bylaws": The Overlook at Crown Mountain, Inc., as they may be amended from time to time.

5. Section 8.4 (v) of the Declaration is deleted in its entirety and replaced with the following provision:

(v) Minimum Dwelling Size. The Design Guidelines may establish a minimum square footage of enclosed, heated and cooled living space for residential dwellings. Upon written request of an Owner, the ARB may waive the minimum square footage requirement if, in the ARB's sole discretion, the resulting appearance of such residential dwelling will preserve and conform to the overall appearance, scheme, design, value and quality within the Properties. According to the Design Guidelines, the minimum square footage is as follows:

(a) All single story residences shall consist of a minimum of 2,100 square feet of heated living space.

(b) All multi-story residences shall consist of a minimum of 2,300 square feet of heated living space above grade level. The main level shall consist of a minimum of 1,700 square feet of heated living space, and there shall be a minimum of 600 square feet of heated living space on each additional floor above grade level. Any basement shall not be included in the minimum square footage calculation.

6. Section 9.3 of the Declaration is deleted in its entirety and replaced with the following provision:

9.3 Leasing. Units may be leased for residential purposes only. All leases shall be in writing and shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association, and the lease term must exceed 30 days. The lease shall also obligate the tenant to comply with the foregoing. **No unit, lot or property under this declaration may be used for short term or vacation rentals, which for the purpose of this provision, shall be considered any rental for a period of 30 days or less.** The Board may require notice of any lease together with such additional information deemed necessary by the Board.

\_\_\_\_\_ Yes, I the undersigned, being a member of Crown Mountain Swim and Tennis Club Association hereby consents to the proposed amendments.

\_\_\_\_\_ No, I the undersigned, being a member of Crown Mountain Swim and Tennis Club Association hereby do not consent to the proposed amendments.

Owner's Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Owner's Unit Number(s): \_\_\_\_\_

Owner's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Please return this completed Consent Form by Monday, September 14, 2020. This time period may be extended as necessary.

Return by Mail or Email to:  
William T. Hardman  
PO Box 247  
Dahlonega, GA 30533  
hardmanproperties@gmail.com

July 20, 2004

**Design Guidelines  
for the  
Crown Mountain Swim and Tennis Club**

**SITE WORK**

**Clearing & Grading:**

No tree over a 6" caliper shall be cleared unless within 20 feet of the house structure, in the driveway or specifically approved by the ARB.

**Drainage:**

All drainage shall follow any recorded drainage easements, be directed toward the street or drainage structures or may continue as existing, if volume is not increased or concentrated or otherwise causes erosion or damage to adjoining properties.

**House Placement:**

House placement should usually be toward the front of the lot with the front of the house oriented towards the street. House placement should take into consideration the natural topography of the site and the existing and future locations of adjacent houses. If at all possible, 45 degree view corridors from the rear of adjacent houses should be respected.

**First Floor Elevations:**

First floor elevations shall be a minimum of 2'-6" above grade at the front of the house.

**Driveways:**

Driveways shall be installed with a curvilinear shape and be a minimum of 3' off the property line. Driveways should be no more than 14' wide in the front yard, 10' wide at the property line and flairs at the street shall be no more than 20' wide. Side entry turn arounds should be at least 27' wide. Courtyard garages must allow for a minimum of 4' of landscaping between the driveway and the house.

At least the first 50' of the driveway, beginning from the house, shall be concrete, after which the driveway may transition into asphalt. All parking areas shall be concrete. There shall be no gravel driveways or parking areas.

## **HOUSE DESIGN**

### **Architectural Character:**

Varied styles are encouraged but should be compatible with time tested regional styles that have been indigenous to the area of the North Georgia mountains.

### **Exterior Colors:**

Exterior colors should be reserved and compatible with the natural setting of the development.

### **Garages:**

Garages should be side entry where possible but whenever a garage faces a street recessed double doors are required with an appropriate front elevation level of detail. Driveways for courtyard garages should maintain a minimum of 4'-0" wide planting area between the paving and the house. All garages should have an appropriate head detail such as jack arches or a wooden pediment.

### **Square Footage:**

All single story residences shall consist of a minimum of 2,300 square feet of heated living space.

All multi-story residences shall consist of a minimum of 2,500 square feet of heated living space above grade level. The main level shall consist of a minimum of 1,800 square feet of heated living space, and there shall be a minimum of 700 square feet of heated living space on each additional floor above grade level. Any basement shall not be included in the minimum square footage calculation.

### **Material:**

The exterior of all homes shall be constructed of brick, rock, stone, wood, cementitious siding, such as "Hardie Plank", or equal material as approved by ARB. There shall be no log homes.

## **MODIFICATIONS AND MISCELLANEOUS STRUCTURES**

### **Fences:**

Fences shall be specifically submitted to the ARB from both design and location. Freestanding dog pens are not allowed. Chain link fencing is not allowed.

### **Attached Structures and/or Additions:**

Any attached structure or addition to a house must be designed and constructed to be compatible with the existing house.

### **Detached Enclosed Structure:**

Detached enclosed structures are discouraged but may be considered by the ARB. Gazebos are allowed but must be specifically approved by the ARB. Storage and garden sheds are allowed if consistent with the house designed and attached to the house.

### **Pools and Hot Tubs:**

Pools and hot tubs should be located directly behind the house with the edge of the water no closer to the property line than 20 feet. All equipment must be within the fence, a minimum of 1-foot off the property lines and located and screened so as to not be a nuisance. Above ground pools and inflatable bubbles are prohibited. Light shall be of a low-level type. All pools and hot tubs shall be submitted for approval before beginning that work.

### **Play Equipment:**

When possible, play equipment should be located directly behind the house. If this is not possible, the equipment must be at least 10 feet off all property lines and screened from view from the street. Equipment should be of natural wood or dark colored metal or plastic. Roofs shall be of natural dark painted materials or dark green canvas.

### **Exterior Lighting:**

Exterior lighting is generally acceptable as follows: Utility/security lighting will normally be approved if installed in the soffit and to the rear of the front corners of the house and directed away from the street and adjoining properties. Carriage type pole lights may be approved. Minimal "moon lighting" and landscape lighting may be approved.

### **Satellite Dishes:**

Satellite dishes may be approved if no larger than 1 meter in diameter and located for the least

visual impact. Dishes shall not be mounted on fencing. All equipment shall be painted to match the color of the structure to which it is attached.

**Miscellaneous Exterior Items:**

Exterior sculptures, flagpoles, fountains, birdbaths, or any similar exterior items must be specifically approved by the ARB. Mailboxes which have been approved by the ARB are available for purchase and should be included in construction costs, as these are the only ARB approved boxes.

**Clotheslines:**

Clotheslines of any type are prohibited.

**Signage:**

Signage required by legal proceedings is permitted. Not more than one professional security sign of reasonable size may be permitted by the ARB. All other signage must be specifically approved by the ARB.

### **CONSTRUCTION HOURS**

All construction activities, including, but not limited to, site work and house construction, shall be limited to the following times.

- 1) On weekdays, from 7:30 a.m. to 5:00 p.m.; and
- 2) On Saturdays, from 9:00 a.m. to 4:00 p.m..

No construction activities are allowed on Sundays.

Construction sites are to be kept in neat and clean condition at all times and no mud may slide into street.



After recording return to:  
Horne & Horne, P.C.  
P.O. Box 37  
Dahlonega, Georgia 30533

GEORGIA, LUMPKIN COUNTY  
CLERK OF SUPERIOR COURT  
Filed 2:00P M. 4-23-03  
Recorded in Deed Book H31 Page 44-78

*Edward E. Tucker*  
EDWARD E. TUCKER, CLERK

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
CROWN MOUNTAIN SWIM AND TENNIS CLUB**

This Declaration of Covenants, Conditions, and Restrictions (the "Declaration") is made as of the date on the signature page hereof by Bill T. Hardman, Mary J. Escoe and William T. Hardman (the "Declarant").

Declarant is the owner of the real property described in Exhibit "A," which is attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article 1 below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Crown Mountain Community Association, Inc., to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration.

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

This document does not and is not intended to create a condominium within the meaning of the O.C.G.A. §44-3-70, et seq., nor a property owners' development within the meaning of the O.C.G.A. §44-3-220, et seq.

## ARTICLE 1. DEFINITIONS

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

- 1.1 "ARB": The Architectural Review Board, as described in Section 8.2.
- 1.2 "Area of Common Responsibility": The Common Area and the Private Streets, together with such other areas, including without limitation, rights-of-way, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract, or agreement.
- 1.3 "Articles of Incorporation" or "Articles": The Articles of Incorporation of Crown Mountain Community Association, Inc., as filed with the Secretary of State of the State of Georgia.
- 1.4 "Association": Crown Mountain Community Association, Inc., a Georgia nonprofit corporation, its successors or assigns.
- 1.5 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Georgia corporate law.
- 1.6 "Builder": Any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Unit for residential purposes shall cease to be considered a Builder with respect to such Unit immediately upon occupation of the Unit for residential purposes, notwithstanding that such Person originally purchased the Unit for the purpose of constructing improvements for later sale to consumers.
- 1.7 "Bylaws": The Bylaws of Crown Mountain Community Association, Inc., as they may be amended from time to time.
- 1.8 "City": The City of Dahlonega, Georgia.
- 1.9 "City Sewer System": The municipal sanitary sewer system installed in the Properties which deliver effluent to the City's sanitary sewer treatment facilities.

- 1.10 "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a Majority of the members of the Board of Directors as provided in Section 3.2.
- 1.11 "Common Area": All real and personal property, including easements and reservation of rights, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners.
- 1.12 "Club Facilities": The clubhouse, tennis courts, and swimming pool.
- 1.13 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation.
- 1.14 "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically defined by the Board of Directors and the ARB.
- 1.15 "Declarant": Bill T. Hardman, Mary J. Escoe and William T. Hardman, any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.
- 1.16 "Design Guidelines": The design and construction guidelines, lot protocols, and application and review procedures applicable to the Properties promulgated and administered pursuant to Article 8.
- 1.17 "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration.
- 1.18 "General Assessment": Assessments levied on all Units subject to assessment under Article 7 to fund Common Expenses for the general benefit of all Units.
- 1.19 "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, rules of the Association, all Plats and any additional covenants governing any portion of the Properties or any of the above, as each may be amended from time to time.
- 1.20 "Majority": Those votes, Owners, members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

3. 1.21 "Member": A Person subject to membership in the Association pursuant to Article
- 1.22 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.
- 1.23 "Mortgagee": A beneficiary or holder of a Mortgage.
- 1.24 "Occupant": Any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.
- 1.25 "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded land sales contract, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.
- 1.26 "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person, or any other legal entity.
- 1.27 "Plat or Plats": The plats recorded by Declarant in the Public Records which subdivide all or any portion of the Properties into Private Streets, Units and Common Areas.
- 1.28 "Private Streets": The streets, roads, and drives located within the Properties. The Private Streets, including the streets and roads constructed on Common Area for which fee title is held by the Association, as well as drives which are totally or partially located on Units, provided such drives have been designated as "Access Easements" on one or more Plats.
- 1.29 "Properties": The real property described on Exhibit "A".
- 1.30 "Public Records": The Official Records of the Clerk of the Superior Court of Lumpkin County, Georgia.
- 1.31 "Special Assessment": Assessment levied in accordance with Section 7.5.
- 1.32 "Supplemental Declaration": An instrument filed in the Public Records which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.
- 1.33 "Total Association Vote": The votes attributable to the entire membership of the Association entitled to vote, not merely a majority vote of the members attending a meeting of the members.

1.34 "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, townhomes, condominiums, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public.

## ARTICLE 2. PROPERTY RIGHTS

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

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area pursuant to Section 4.3;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements, if any, set forth in this Declaration;
- (f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;
- (g) The right of the Board and the Declarant to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(i) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 11.

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

2.2 Private Streets. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across the Private Streets, whether or not any such Private Streets are Common Area, for the purpose of ingress and egress to public rights of way. Every Owner shall have the right to install a driveway connecting such Owner's Unit to the Private Streets, provided that the installation of any such driveway shall be subject to all of the terms and provisions of the Declaration, including, but not limited to, Article 8. Each Owner shall be responsible for the maintenance, repair and replacement of any individual driveway connecting the Owner's Unit to a Private Street. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit, subject to:

(a) This Declaration and all other Governing Documents;

(b) The right of the Declarant, so long as the Declarant owns the Private Streets, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that the Declarant shall not by the adoption of any rule or regulation bar access of the Owners to or from their Unit and public rights of way;

(c) The right of the Declarant to dedicate all or any part of Private Streets;

(d) The right of the Declarant to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners contained in this Section;

(e) The rights of the Declarant to maintain the Private Streets;

(f) Rights of others to use the Private Streets as provided herein.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees as applicable.

2.3 Condemnation. In the event of a taking by eminent domain of any portion of the Common Area on which improvements have been constructed, then, unless within 60 days after such taking, at least 75% of the Total Association Vote shall otherwise agree, the Association

shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor.

### ARTICLE 3. MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or Trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument delivered to the Secretary of the Association.

3.2 Voting. The Association shall have two (2) Classes of Membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which may be exempt from assessment. All Class "A" votes shall be cast as provided in Section 3.2(c) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a Majority of the members of the Board of Directors during the Class "B" Control Period which shall continue until the first to occur of the following:

(i) when ninety percent (90%) of the total number of Units have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders:

(ii) December 31, 2010; or

(iii) when, in its discretion, the Class "B" Member so determines.

After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

(i) two (2) years after expiration of the Class "B" Control Period; or

(ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

The Declarant may, by Supplemental Declaration, create additional classes of membership with such rights, privileges and obligations as may be specified in such Supplemental Declaration.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Owner. No vote shall be exercised on behalf of any Unit if any assessment for such Unit is delinquent. In any situation where there is more than one (1) Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

#### **ARTICLE 4. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 9. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.

4.2 Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibit "A", personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.



4.3 Enforcement. The Board may impose sanctions for violation of the Governing Documents, after compliance with the notice and hearing procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the Unit of the violator (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);

(b) filing liens in the Public Records for nonpayment of any assessments or fees;

(c) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;

(d) suspending an Owner's right to vote;

(e) suspending any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(f) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association; and

(g) levying Specific Assessments to cover costs incurred in bringing a Unit into compliance in accordance with the provisions contained herein.

In addition, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and the removal of pets that are in violation of pet rules) or by suit at law or in equity to enjoin any violation and/or to recover monetary damages.

In the event that any occupant, guest or invitee of a Unit violates the Governing Documents, the Board may sanction such occupant, guest or invitee and/or the Owner of the Unit that the violator is occupying or visiting.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

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

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit local governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

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

4.5 Governmental Interests. For so long as the Declarant owns any property which is subject to this Declaration by the Declarant, the Declarant may designate sites within the Properties for utility facilities, and parks, streets, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant.

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

The Indemnified Parties shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct, or bad faith. The Indemnified Parties shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such Indemnified Parties may also be Members of the Association). The Association shall indemnify and forever hold each such Indemnified Party harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former Indemnified Party may be entitled. The Association may, as a Common Expense, maintain adequate general liability and

officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of Common Area. The Association may dedicate portions of the Common Area to Lumpkin County, Georgia, the City of Dahlonega or to any other local, state, or federal governmental or quasi-governmental entity.

## ARTICLE 5. MAINTENANCE

### 5.1 Association's Responsibility.

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

(i) Common Area (including any Exclusive Common Area);

(ii) Private Streets;

(iii) all landscaping and other flora, signage, parks, ponds, structures, and improvements, including any entry fences, signage, walls, fences, lighting systems and fixtures, irrigation systems, bike and pedestrian pathways/trails situated upon the Common Area;

(iv) all furnishings, equipment and other personal property of the Association;

(v) any landscaping and other flora, signage, parks, pedestrian pathways/trails, sidewalks, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board.

(b) The Association may, as a Common Expense, maintain other property which it does not own, including, without limitation, property dedicated to the public such as buffer zones, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

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

(d) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner; (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; or (iii) such maintenance is assumed by any utility company; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Each Owner shall also maintain the mailbox serving his or her Unit and all landscaping and street trees located in the right-of-way immediately adjacent to such Owner's Unit. In addition to any other enforcement rights, if any Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Article 8. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

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

## ARTICLE 6. INSURANCE AND CASUALTY LOSSES

### 6.1 Association Insurance.

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

(i) Blanket property insurance for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be

substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage; and

(v) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include without limitation, flood insurance, fidelity insurance covering persons responsible for the Association funds, and property insurance on insurable improvements.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment.

(b) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed within sixty (60) days after the loss, unless members entitled to cast at least 75 % of the Total Association Vote otherwise agree. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. If determined in the manner described above that the damage or destruction to the Common Area

shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

6.2 Builder/Contractor Insurance.

All builders and contractors performing any building and/or construction activities on any of the Properties shall maintain in continuous effect during such activities the following types of coverage:

(a) Commercial general liability insurance for damage or injury caused by the negligence of the contractor or builder or any of its employees, agents, or sub-contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000) per occurrence with respect to bodily injury, personal injury, and property damage;

(b) Workers compensation insurance and employers liability insurance, if and to the extent required by law.

All builders and contractors must furnish to the Declarant and/or the Association a certificate of insurance evidencing the required coverages prior to beginning any construction activities on any of the Properties.

6.3 Owner Insurance.

All owner's shall maintain in continuous effect the following types of coverage:

(a) Builder's risk insurance during the construction period of any structure on the owner's unit; and

(b) Homeowner's insurance on all structures located on the owner's unit in the minimum amount of the fair market value of the structures.

Owner's must submit evidence of the required insurance to the Declarant and/or the Association upon request.

## ARTICLE 7. ASSESSMENTS

7.1 Creation of Assessments. There are hereby created assessments for Association expenses, as the Board may specifically authorize from time to time.

7.2 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of Units, including, but not limited to, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

7.3 General Assessments. General Assessments shall be levied equally against all Units subject to assessment, and the assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves.

General Assessments shall be paid in such a manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in one annual installment.

General Assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Area, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General Assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitorial services, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

7.4 Computation of General Assessment. Before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a capital contribution or reserve in accordance with a capital budget. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the General Assessment to each Owner. Such budget and assessment shall become effective unless disapproved at a meeting by a two-thirds majority of the votes cast. If the proposed budget is

disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

7.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership. Any Special Assessment shall require the affirmative vote or written consent of members representing 67% of the Units and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

7.6 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay the Association: (a) General Assessments; and (b) Special Assessments. All such assessments, together with interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or 18% per annum on the principal amount due), late charges, costs of collection, and reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge and continuing lien in favor of the Association upon each Unit against which the assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Unit at the time the assessment became due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit, and each grantee of an Owner shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

7.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the earlier date of the conveyance of the Unit a Person other than a Builder or Declarant, or the occupancy of the Unit for residential purposes. For Builders, the obligation to pay assessments shall commence as to each Unit twelve (12) months after the



taking of title to the Unit. The first annual General Assessment levied on each Unit shall be paid, as applicable, (i) at the closing of the sale to a Person other than a Builder or Declarant, or (ii) immediately upon demand by the Association based on the date of occupancy of the Unit for residential purposes. The first annual General Assessment shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

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

7.9 Exempt Property. The following property shall be exempt from payment of General Assessments and Special Assessments: (i) all Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility, and (ii) any property dedicated to and accepted by any governmental authority or public utility.

7.10 Declarant's Obligation for Assessments. So long as the Declarant owns any property which is subjected to this Declaration, Declarant may annually elect either to pay an amount equal to regular assessments on all of its unsold Units or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

7.11 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer.

Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by execution of this Declaration or acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in

favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Area and recreational facilities and the right to receive and enjoy other benefits as may then be provided by the Association. Any such suspension shall not affect such members obligation to pay assessments due during the period of such suspension and shall not effect the permanent lien on such Unit in favor of the Association.

7.12 Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Unit. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.

## ARTICLE 8. ARCHITECTURAL STANDARDS

8.1 General. Prior to the commencement of any construction on any Unit, the following approvals and requirements must be met:

(a) No exterior structure or improvement shall be placed, erected, or installed upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit, except in compliance with this Article, and approval under Section 8.2, unless exempted from the application and approval requirements.

(b) Any Owner may remodel, repaint or redecorate the interior of structures on his Unit without the approvals required by subsection (a) hereinabove; however, modifications to the interior of screened porches, patios and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval pursuant to subsection (a) herein above. No approvals shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme. All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer. This Article shall not apply to the activities of the Declarant. This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any property which is subject to this Declaration.

8.2 Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the ARB. **The ARB may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application.**

Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The ARB shall consist of at least three, but not more than five, persons, who need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB.

The Declarant shall have the exclusive authority to appoint all members of the ARB until certificates of occupancy have been issued for one hundred percent (100%) of the Units. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, such right shall be assumed by the Association. Following the expiration or surrender of the Declarant's right to appoint all members of the ARB, the Board shall have the right to appoint all members of the ARB, who shall serve at the Board's discretion.

### 8.3 General Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from the Recreational Facilities or any Common Area, including, but not limited to, the adoption of fence restrictions applicable to Units located adjacent to the Recreational Facilities. In addition, the Design Guidelines may adopt specific requirements with respect to each Unit, such as specific protocols and designation of nondisturbance areas. A lot "protocol" for each Unit may be prepared by the ARB which sets forth the home location, finished floor elevation and approximate finish grades. In consideration for these services, the Owner may be charged a reasonable fee by the ARB.

The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Declarant and the ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARB and compliance with the Design Guidelines does not guarantee approval of any application.

For so long as the Declarant retains the right to appoint all members of the ARB pursuant to Section 8.2, the Declarant shall have sole and full authority to amend the Design Guidelines. Thereafter, the ARB shall have such right. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendment to the Design Guidelines; amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive. The Declarant and the ARB shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review and decision on approval. In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time.

In the event that the ARB fails to approve or to disapprove any complete application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to this Article. Notwithstanding the above, the ARB, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

#### 8.4 Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration or existing improvements; installation or replacement of mailboxes; basketball hoops; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; gazebos or playhouses; window air-conditioning units or fans; hot tubs; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind; and artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(b) Specific Guidelines. In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the ARB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is outlined from the ARB.

(i) Tree Removal. Removal of trees and other natural resources without the prior written consent of the ARB is prohibited except as may be permitted by the Design Guidelines.

(ii) **Temporary or Detached Structures.** Except as may be permitted by the ARB, no temporary or detached house or dwelling shall be placed or erected on any Unit. No mobile home, trailer home, travel trailer, camper or vehicle commonly known as a "recreational vehicle" shall be stored, parked or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

(iii) **Utility Line.** Overhead utility lines are not permitted, including lines for cable television, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(iv) **Signs.** No sign of any kind shall be erected on the Properties without the prior written consent of the ARB. Unless in compliance with this Article, no signs shall be posted or erected within any portion of the Properties, including the Common Area, any Unit, or any structure or dwelling located on the Common Area or any Unit (if such sign would be visible from the exterior of such structure or dwelling as determined in the ARB's sole discretion). All signs must be professionally prepared. The Declarant and the ARB reserve the right to prohibit or to restrict the size, color, lettering and placement of all signs. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agents as may be necessary or convenient for the marketing and development of the Properties.

(v) **Minimum Dwelling Size.** The Design Guidelines may establish a minimum square footage of enclosed, heated and cooled living space for residential dwellings. Upon written request of an Owner, the ARB may waive the minimum square footage requirement if, in the ARB's sole discretion, the resulting appearance of such residential dwelling will preserve and conform to the overall appearance, scheme, design, value and quality within the Properties. The initial minimum square footage is as follows:

(a) All single story residences shall consist of a minimum of 2,300 square feet of heated living space.

(b) All multi-story residences shall consist of a minimum of 2,500 square feet of heated living space above grade level. The main level shall consist of a minimum of 1,800 square feet of heated living space, and there shall be a minimum of 700 square feet of heated living space on each additional floor above grade level. Any basement shall not be included in the minimum square footage calculation.

8.5 **Construction Period.** The initial construction of all structures must be completed within twelve (12) months after the issuance of a building permit, unless extended by the Declarant in its discretion. All other construction shall be completed within the time limits established by the ARB as the project is submitted to the ARB for approval.

8.6 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

8.7 Variance. The ARB may authorize variances from compliance with any guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration, or (iii) estop the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any government agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

8.8 Limitation of Liability. The criteria and requirements established by the ARB for builder approval are solely for the Declarant's protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved builder, including builders from any "Approved Builder List." Owner's selection of a builder shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the builder's qualifications. Furthermore, Owner waives any and all claims and rights Owner has or may have now or in the future, against the ARB or the Declarant. Review and approval of any application pursuant to this Article are made on the basis of aesthetic considerations only. Neither the Declarant nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of plans approved, proposed or prepared by the ARB or any other approved construction or modification, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARB, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit, including, but not limited to, any construction in accordance with plans proposed, prepared or reviewed by the ARB. In all matters, the ARB, and its members shall be defended and indemnified by the Association as provided in Section 4.6. Each Owner and occupant hereby acknowledges that no partnership, joint venture, or principal and agent relationship exists between the ARB and the Declarant or the Association.

8.9 Enforcement. The Declarant, any member of the ARB or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, the ARB or the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed

prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board may enforce these decisions of the Declarant and the ARB by any means of enforcement described in Section 4.3. In addition, the Declarant, the ARB and the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry by the Declarant, ARB or the Board or their representatives onto a Unit for the purpose of inspecting or enforcing compliance with this Article shall not constitute a trespass. All costs, together with the interest at the maximum rate then allowable by law, may be assessed against the benefitted Unit, and collected as a Special Assessment which shall be subject to enforcement as set forth in Section 7.5.

Unless otherwise specified in writing by the ARB, all approvals granted hereunder shall be deemed conditioned upon compliance of all elements of the approved plan and all work previously approved with respect to the same Unit in the manner approved, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Special Assessment, which shall be subject to enforcement pursuant to Article 7.

Neither the ARB, the Association, the Declarant, nor their members, officers, directors or representatives shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the Declarant, the ARB, or the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

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

## **ARTICLE 9. USE RESTRICTIONS AND RULES**

9.1 General Use Restrictions. This Article sets out certain use restrictions which must be complied with by all Owners and Occupants of any Unit. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes and sales offices for Builders, an information center and/or a sales office for the Declarant to assist in the sale of property described on Exhibit "A", offices for any property manager retained by the Association, business offices for the Declarant or the Association or related parking facilities) consistent with this Declaration and any Supplemental Declaration.

9.2 Residential Use. All Units shall be used exclusively for residential purposes and shall not be used to conduct business or trade. No garage sale, rummage sale, moving sale, yard sale or similar activity shall be conducted upon a Unit without the prior written consent of the Board. The Board may establish rules and regulations governing such sales which relieve the Owner from obtaining the Board's consent so long as the Owner complies with the rules and regulations. An Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section may not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

9.3 Leasing. Units may be leased for residential purposes only. All leases shall be in writing and shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board.

9.4 Rules and Regulation. In addition to the rules and regulations stated in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules and regulations shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Total Association Vote, and the written consent of the Declarant, so long as the Declarant owns any property which is subject this Declaration.

9.5 Vehicles. All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt. In addition, the following shall apply:



(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways serving the Units unless otherwise approved by the Board; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties.

(b) Recreational vehicles shall be parked only in the garages, if any, serving the Units. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, campers, buses, commercial trucks and vans. Any recreational vehicle parked or stored in violation of this provision in excess of two (2) days shall be considered a nuisance and may be removed from the Properties. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view.

(c) No motorized vehicles shall be permitted on unpaved Common Area or on pathways or trails within the Properties except for vehicles used by the Association in the maintenance of all or any portion of the Properties.

9.6 Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit 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 the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Properties. 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 or as approved by the ARB pursuant to Article 8 shall be located, installed or maintained upon the exterior of any Unit unless required by law.

9.7 Storage of Materials, Trash, Garbage, Dumping, Etc.

(a) No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Unit, except during the initial construction period of the improvements to the Unit, not to exceed one (1) year in

duration, and then only during periods of actual construction. In addition, during construction the building materials on any Unit shall be placed and kept in an orderly fashion. Any Unit on which construction is in progress shall be policed prior to each weekend and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed.

(b) All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Builders may not dump or bury rocks and trees removed from a building site on any building site. Owners and occupants may not burn or bury biodegradable trash, leaves, debris or other materials except in accordance with rules established by the Board and applicable governmental laws and regulations.

(c) Roads and sidewalks shall be kept free of obstruction at all times. No Owner shall place or stack garbage cans, recycling bins, landscape debris or yard clippings, or other materials or debris on or within any roadways, sidewalks or other pedestrian pathways or trails. In addition, trees, shrubbery and other landscaping materials shall not be permitted to grow in such a manner as to impede pedestrian or vehicular traffic within any roadway, sidewalk, or other pedestrian pathway or trail.

9.8 Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for any commercial purpose. All pets shall be reasonably controlled by the owner whenever outside a Unit and shall be kept in such a manner as to become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive to wildlife, they shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3.

9.9 Hunting and Guns. Hunting, trapping or the discharge of firearms within any portion of the Properties is strictly prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board shall have no obligation to take action to prevent or stop the discharge of any firearm.

9.10 Combustible Liquid. Storage of gasoline, heating or other fuels on any Unit is strictly prohibited, provided that a reasonable amount of fuel may be stored on each Unit for emergency purposes and for operation of lawn mowers and similar tools or equipment. Propane or L. P. tanks greater than five (5) gallons in size may only be stored or operated on a Unit with the express written consent of the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

9.11 Streams. No streams which run across any Unit may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such right as provided in Article 10.

9.12 Common Areas. Owners of Units, as well as their families, tenants, guests, invitees, and pets shall refrain from any actions which deter from the enjoyment by other Owners of Common Areas. Prohibited activities shall include without limitation, maintenance of dogs or other pets under conditions which interfere with the use of Common Areas by other Owners, playing of loud radios or musical instruments, holding of large gatherings without advance approval of the Board, and use of outdoor grills, cooking facilities, tents or other temporary structures, stages, vending machines or facilities, except for events approved in advance by the Board. The Board may promulgate other rules and restrictions for the use of Common Areas.

9.13 Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) No Person shall alter the grading of any Unit without prior approval pursuant to Article 8 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

9.14 Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped so as to permit safe sight across such areas.

9.15 Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed after a subdivision plat including such Unit has been approved and filed in the Public Records. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it or any Builder owns, with the written prior consent of the Owner of the Unit or Units affected. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

9.16 Occupancy of Unfinished Units. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed. For the purposes of this Section, commencement of construction shall mean that (i) all plans for such construction have been approved by the ARB; (ii) a building permit has been issued for the Unit by the appropriate jurisdiction; and (iii) construction of a residential dwelling on the Unit has physically commenced beyond site preparation. Completion of a dwelling shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the Unit.

9.17 Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

## ARTICLE 10. EASEMENTS

### 10.1 Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration, the Association, the City and the designees of each, (which may include, without limitation, any third party service provider, governmental or quasi-governmental entity and any utility company, whether public or private) perpetual, non-exclusive easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of accessing, installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, any other water, sewer, telephone, gas, and electric equipment, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above. Declarant specifically grants to the local water and sewer service supplier, electric company, telephone company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters boxes, etc., as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A" or any adjacent properties.

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

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

10.2 Easement for Slope Control, Drainage and Waterway Maintenance. The Declarant, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, hereby establishes and reserves a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon each Unit for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Unit which are or may be subject to soil erosion;

(b) drainage of natural or man-made water flow and water areas from any portion of the Properties;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Unit or any Common Area;

(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and

(e) installing such pipes, lines, conduits, or other equipment or facilities as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties.

10.3 Easements for Declarant. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use and access.

10.4 Easements for Entry.

The Association shall have the right, but not the obligation to enter all portions of the Properties, including each Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents, employees, officers and managers of the Association, any member of the Board, or committees of the Association. All police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties are hereby granted a perpetual easement for entry. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. The easements granted in this Section include the right to enter any Unit to cure any condition which may increase the risk of fire, immediate danger of personal injury or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Any such entry shall not constitute a trespass.

10.5 Easements for Maintenance and Enforcement.

Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit to

(i) perform its maintenance responsibilities under Article 5, (ii) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, By-Laws, Design Guidelines and rules, and (iii) to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the By-Laws, the Design Guidelines, or the rules. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Any such entry shall not constitute a trespass.

10.6 Lateral Support. Every portion of the Common Area, every Unit, and any improvement which contributes to the lateral support of another portion of the Common Area or of another Unit shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

10.7 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

10.8 Easement for Social Events. Declarant hereby reserves for itself, its successors, assigns and designees a perpetual, non-exclusive easement over the Common Area for the purpose of conducting educational, cultural, entertainment, or sporting events, and other activities of general community interest, at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

## ARTICLE 11. DECLARANT'S RIGHTS

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

11.2 Development and Sales. The Declarant and Builders authorized by Declarant may maintain and carry on the Properties such activities as in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, such as sales activities, tournaments, charitable events, and

promotional events and to restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize, to the extent reasonably possible, any substantial interference with the Members' use and enjoyment of the Common Area. In addition, the Declarant and Builders authorized by Declarant may establish within the Properties, including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, business offices, signs, model units, sales offices, sales centers and related parking facilities. To the extent deemed necessary or desirable by the Declarant, Owners may be excluded from use of all or a portion of such facilities for so long as deemed necessary or desirable in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Properties for access, ingress, and egress and use of such facilities.

During the development of the Properties, the Declarant and Builders will be conducting construction activities that may include the storage of materials and parking of vehicles and equipment on portions of the Properties, the creation of noise, dust and other construction and development related by-products. The Owners or residents hereby acknowledge that said construction and development activities will take place, and hereby agree that such activities shall not constitute a nuisance or in any way create any cause of action against the Declarant or the Builders.

11.3 Improvements to Common Areas. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

11.4 Additional Declarations. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium, easements or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

11.5 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (i) twenty (20) years from the date this Declaration is recorded, or (ii) upon recording by Declarant of a written statement that all sales activity has ceased.

**ARTICLE 12.**  
**GENERAL PROVISIONS**

12.1 Duration.

(a) Unless otherwise limited by Georgia law, this Declaration shall have perpetual duration. If Georgia law limits the period during which covenants may run with the land, then this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Notwithstanding anything contained herein to the contrary, nothing shall be construed to permit the termination of any easement created in this Declaration without the consent of the holder of such easement.

12.2 Amendment.

(a) By Declarant. Subject to contrary provisions herein, until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property which is subject to this Declaration, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Members for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220 et seq. (1994) and conforming this Declaration to any mandatory provisions thereof. Any such amendment shall require the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the



Total Association Vote and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity of Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant, or the assignee of such right or privilege. If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

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

12.4 Alternative Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures. Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

12.5 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments as provided in Article 7; (iii) proceedings involving challenges to ad valorem taxation; (iv) counter-claims brought by the Association in proceedings instituted against it, or (v) actions brought by the Association against any contractor, vendor, or supplier of goods and services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

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12.6 **Compliance.** Every Owner and occupant of any Unit shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by an aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law, or in equity, in addition to those enforcement powers granted to the Association in this Declaration.

12.7 **Notice of Sale or Transfer of Title.** Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date up which such notice is received by the Board, notwithstanding the transfer of title.

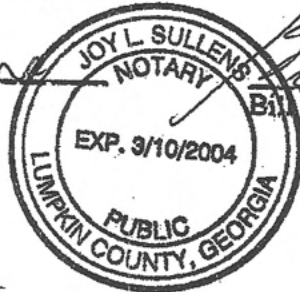
Signed, sealed and delivered in our presence this 28 day of March, 2003

*Lia Brown*

Unofficial witness

*J. L. Sullens*

Notary Public



*Bill T. Hardman* (SEAL)

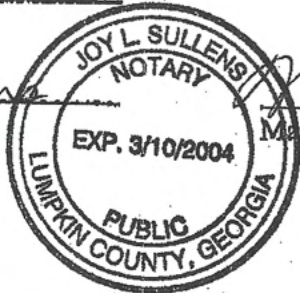
Signed, sealed and delivered in our presence this 28 day of March, 2003

*Lia Brown*

Unofficial witness

*J. L. Sullens*

Notary Public



*Mary J. Escor* (SEAL)

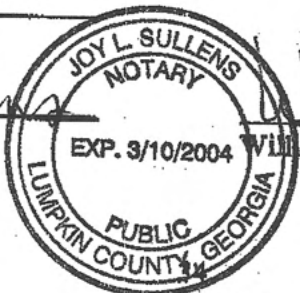
Signed, sealed and delivered in our presence this 28 day of March, 2003

*Lia Brown*

Unofficial witness

*J. L. Sullens*

Notary Public



*William T. Hardman* (SEAL)

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**Exhibit "A"**

All that tract or parcel of land lying and being in Land Lots 931, 932, 933, 945, 946, and 947 of the 12th District, 1st Section of the City of Dahlonega, Lumpkin County, Georgia, consisting of 97.069 acres, more or less, and being more particularly set out on a plat of survey of the Crown Mountain Swim & Tennis Club dated September 9, 2002, revised January 14, 2003, prepared by William H. Collins and William E. Whidden, Georgia Registered Land Surveyors. This plat is recorded in Plat Cabinet 1, Slide 85, Plat 8621, Lumpkin County Records, and is incorporated herein by reference for a more detailed description.

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