



Linda Carter  
Clerk of Superior Court DeKalb Cty. Ga.  
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**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**SUTHERLAND PLACE**

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ALL RIGHTS RESERVED. THIS MASTER DECLARATION MAY BE USED ONLY IN  
CONNECTION WITH THE SALE OF SUTHERLAND PLACE AND THE OPERATION OF  
SUTHERLAND PLACE COMMUNITY ASSOCIATION, INC.***

**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**SUTHERLAND PLACE**

THIS DECLARATION is made on the date set forth below by Lake Claire Development, LLC, a Georgia limited liability company ("Declarant");

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described in Article II, Section 1 of this Declaration;

WHEREAS, Declarant desires to subject the real property described in Article II, Section 1 to the provisions of this Declaration to create a residential community of single-family and multi-family housing, including townhomes and a condominium, and to provide for the subjecting of other real property to the provisions of this Declaration; and

NOW, THEREFORE, Declarant declares that, subject to the provisions of Section 3 of Article X of this Declaration, the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is subjected to the provisions of this Declaration, and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall be for the benefit of all owners of the property subject to this Declaration.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE GEORGIA CONDOMINIUM ACT, O.C.G.A. SECTION 44-3-70, ET SEQ.

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

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**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**SUTHERLAND PLACE**

**Article I**  
**Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "A", attached and made a part of this Declaration.

**Article II**  
**Property Subject To This Declaration**

Section 1. Property Hereby Subjected to This Declaration. The real property described in Exhibit "B" attached hereto and by reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereinafter set forth and any and all easements, restrictions and/or requirements as set forth on the Survey and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration. However, as provided on Article X, by one (1) or more Supplementary Declarations, the Declarant of the Association has the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

**Article III**  
**Association Membership and Voting Rights**

Section 1. Membership. Every Person who is the record owner of a fee interest in any Lot or Unit that is subject to this Declaration shall automatically be a member of the Association upon taking title to a Lot and shall remain a member for the entire period of ownership. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot or Unit. In the event of multiple Owners of a Lot or Unit, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall go along with and may not be separated from ownership of any Lot or Unit. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor more than one (1) office held for each Lot or Unit owned.

Section 2. Voting. Members shall be entitled to one (1) vote for each Lot or Unit owned. When more than one (1) Person holds an ownership interest in any Lot or Unit, the vote for such Lot or Unit shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, a vote for a Lot or Unit shall be suspended in the event more than one (1) Owner of a Lot or Unit attempts to cast it.

Section 3. Neighborhoods. Every Lot shall be located within Blocks 1, 2, 3 and 5 of the Community, as shown on the Survey, which Blocks shall collectively comprise the Subdivision Neighborhood. Every Unit shall be located within Block 4 of the Community, as shown on the Survey,

which Block alone shall comprise the Condominium Neighborhood. The Units within the Condominium Neighborhood shall be subject to additional covenants as set forth in the Condominium Declaration. The Blocks shall elect directors to the Board of Directors of the Association in accordance with Article III, Section 3 of the Bylaws, to represent the interests of Owners of Lots and Units in such respective Blocks.

Each Neighborhood may require that the Association provide a higher level of service or special services for the benefit of Lots or Units in such Neighborhood upon the affirmative vote, written consent, or a combination thereof of a Majority of Owners within the Neighborhood. In such event, the Association shall provide the requested services. The cost of such services shall be assessed only against the Lots or Units within such Neighborhood as a Neighborhood Assessment pursuant to Article IV, Section 4 hereof.

#### **Article IV** **Assessments**

Section 1. Purpose of Assessment. 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 Lots and Units, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of Lien and Personal Obligation for Assessments. Each Owner of any Lot and each Owner of any Unit, by acceptance of a deed to the Lot or Unit, whether or not stated in the deed, covenants and agrees to pay to the Association: (a) common assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; (c) Neighborhood Assessments; and (d) specific assessments against any particular Lot or Unit which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest (not to exceed the maximum rate permitted by law per annum on the principal amount due), costs, including, without limitation, reasonable attorney's fees actually incurred, shall be (a) a charge on the land and a continuing lien upon the Lot or Unit against which each assessment is made from the time the sums become due and payable; and (b) the personal obligation of every Person who is an Owner of the Lot or Unit at the time the assessment becomes due. The grantee of each Owner shall be jointly and severally liable for the portion of an assessment as is due and payable at the time of transfer of the Lot or Unit. However, the liability of a grantee for the unpaid assessments of an Owner shall not apply to any first Mortgage holder taking title through foreclosure proceedings or by deed in lieu of foreclosure; provided, however, any first mortgage holder who takes title through foreclosure proceedings or by deed in lieu of foreclosure shall be liable for all assessments due after the date of foreclosure.

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

Unless otherwise specified herein, assessments shall be levied equally on all Lots and all Units either within the Community or within the Neighborhood, as applicable, and shall be paid in such manner and on such dates as are fixed by the Board of Directors. Upon ten (10) days written notice, the Board may accelerate the annual assessment for delinquent Owners. Unless the Board provides otherwise by resolution, assessments shall be paid in monthly installments.



Section 3. Computation of Annual Assessment. It shall be the duty of the Board, at least thirty (30) days before the beginning of each fiscal year, to prepare a budget covering the estimated common expenses of the Association during the coming fiscal year. The budget may include a capital contribution establishing a reserve fund in accordance with a budget separately prepared.

In addition, the budget shall incorporate a line item for costs and expenses related to the maintenance and improvement of the ponds located within the Community ("Pond Maintenance Funds"). The Association shall expend, at its discretion, such Pond Maintenance Funds, provided that such expenditures are directly related to maintaining and improving the ponds located within the Community, and not other landscaping needs of the Community.

The common assessment to be levied against each Lot and each Unit for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted common expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots and Units subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots and Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article X hereof, on an annual basis, the Declarant may elect, but shall not be obligated, to reduce the annual assessment for any fiscal year by payment of a subsidy. However, any Declarant subsidy shall be conspicuously disclosed as a line item in the income portion of the common expense budget. If the Declarant elects to pay a subsidy the amount of the subsidy shown on the budget shall be an estimate only and the Declarant shall be obligated to fund such subsidy only to the extent of any operating deficit, if any, between the actual operating expenses of the Association and the sum of annual, common assessments, special assessments, Neighborhood Assessments and specific assessments collected by the Association in any assessment year. The payment of a subsidy in one (1) year shall under no circumstances obligate the Declarant to continue payment of a subsidy in future years; provided, however, the Declarant shall be responsible for assessments to the extent required by Section 8 of this Article. The Declarant, in its sole discretion, may choose to characterize all such subsidized amounts expended to offset any actual operating deficit of the Association as loans to the Association, which, at the Declarant's request shall be evidenced by a promissory note(s) from the Association to Declarant. Such promissory note(s), if any, shall be due and payable upon demand, with interest at the rate of ten percent (10.0%) per annum after demand, unless otherwise negotiated and agreed to by the Association and the Declarant.

The Board shall deliver or mail a copy of the common expense budget and notice of the amount of the assessment for each Lot and each Unit to the Owners thereof at least twenty-one (21) days prior to the beginning of the fiscal year. The budget and assessment shall become effective unless disapproved at the annual meeting by a Majority of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X); provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

Notwithstanding the above, in the event the proposed budget is disapproved or the Board fails to prepare and distribute the budget for any year then until such a budget is prepared and distributed, the budget in effect for the immediately preceding year shall continue for the current year. In such case, the Board of Directors may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to

budgets considered at special meetings. Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions.

Section 4. Computation of Neighborhood Assessments. It shall be the duty of the Board, at least thirty (30) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated expenses benefiting the Owners of Lots within the Subdivision Neighborhood and the Owners of Units in the Condominium Neighborhood, to be incurred by the respective Neighborhoods. The Board shall be entitled to set such budget to the extent that this Declaration, the Condominium Declaration, any Supplementary Declaration, or the Bylaws specifically authorize the Board to assess certain costs as a Neighborhood Assessment. Notwithstanding the above, under no circumstances shall the Board of Directors impose a Neighborhood Assessment for any fees related to the maintenance, repair or operation of the walking trails or any other recreational amenity that may be added to the Community for the use and enjoyment of all Owners in the Community.

The budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. Neighborhood expenses shall be allocated equally among all Lots or Units within the Neighborhood, and levied as a Neighborhood Assessment, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Lots or Units in proportion to the benefit received, if so directed by the Neighborhood in writing to the Board of Directors.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Lot or Unit in the Neighborhood for the coming year to be delivered to the Owners of each Lot and the Owners of each Unit in the Community at least twenty-one (21) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at the annual meeting by a Majority of the Owners of Lots or Units in the Neighborhood to which the Neighborhood Assessment applies; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

In the event the proposed budget for any Neighborhood is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year. In such case, the Board of Directors may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings. Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions.

Section 5. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special assessments may be levied against the entire membership, if the special assessment is for common expenses, or against the Lots or Units within a particular Neighborhood, if the special assessment is for the benefit of Owners of Lots or Units within a Neighborhood. Special assessments must be approved by the affirmative vote, written consent or any combination thereof, of Owners holding a Majority of the votes allocated to properties which will be subject to the special assessment and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X). Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the

fiscal year in which the special assessment is imposed.

Section 6. Specific Assessments. The Board shall have the power to specifically assess specific Lots and specific Units pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XIII, Section 1, costs and expenses of self-help pursuant to Article XIII, Section 2 and the costs of maintenance performed by the Association, which the Owner is responsible for under Article VII, Sections 1 and 2, shall be specific assessments. The Board may also specifically assess Lots and Units for the following Association expenses, except for expenses incurred for maintenance and repair of items, which are the maintenance responsibility of the Association:

(a) Expenses of the Association, which benefit less than all of the Lots and/or Units in a respective Neighborhood or in the Community may be specifically assessed equitably among all of the Lots and/or Units, which are benefited according to the benefit received.

(b) Expenses of the Association which benefit all Lots and/or Units, but which do not provide an equal benefit to all Lots and/or Units, may be assessed equitably among all Lots and/or Units according to the benefit received.

Section 7. Lien for Assessments. All assessments levied against any Lot and any Unit, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot or the Unit in favor of the Association from the time the sums become due and payable. The Association shall have the right, but not the obligation to evidence the existence of the lien by filing a notice of lien in the DeKalb County, Georgia records. The lien shall be superior to all other liens and encumbrances on the Lot or Unit, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the DeKalb County, Georgia, records and all amounts advanced under the terms of and secured by the Mortgage.

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

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments of assessment, which are not paid when due, shall be delinquent. Any assessment or installment 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, which shall not exceed fifteen (15%) percent of the assessment payment. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. If the assessment is not paid when due, a lien shall attach and, in addition, the lien shall include the late charge, interest at a rate not to exceed the highest rate allowed under Georgia law, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The existence of the lien may, but is not required to be, evidenced by the filing of a notice of lien in the DeKalb County, Georgia records. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Article shall be in favor of the Association and shall be

for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot or Unit at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot or Unit.

No Owner may waive or otherwise exempt himself or herself from liability for assessments, by abandoning the Lot or Unit or in any other manner. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and no reduction of any assessment shall be claimed or allowed by reason of (a) any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, (b) for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or (c) from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

Section 9. Date of Commencement of Assessments.

(a) Assessments against Lots. Assessments shall commence as to a Lot on the first day of the month following the conveyance of the Lot to a Person other than (a) the Declarant, or (b) a builder or developer who purchases the Lot for the purpose of construction of a residence and resale of the Lot and residence. Neither the Declarant nor a builder or developer who purchases a Lot for the purpose of construction of a residence and resale of the Lot and residence shall be responsible for the payment of any type of assessment; provided, however, assessments shall commence on Lots containing occupied residences that are owned by Declarant or any builder or developer on the first day of the month following the occupancy of the residence located on the Lot.

(b) Assessments against Units. Assessments shall commence as to every Unit (including those Units that are owned by the Declarant) on the date on which the Condominium in which such Unit located is created in accordance with the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.* (1991 and Supp. 2001), as may be amended from time to time.

(c) All Assessments. Assessments shall be due and payable in a manner and on the schedule that the Board of Directors provides. Lots and Units, which have not been conveyed as provided above, shall not be subject to assessment. The first annual common assessment and Neighborhood Assessment, if any, shall be adjusted according to the number of months then remaining in that fiscal year.

**Article V**  
**Architectural Standards**

Section 1. Architectural Control Committee. No exterior construction, addition, erection, or alteration shall be made upon any part of the Community unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the Architectural Control Committee ("ACC"). Notwithstanding the foregoing, reasonable door decorations may be posted on the door of a dwelling located on a Lot or a Unit, and reasonable, seasonal, decorative white lighting may be displayed between Thanksgiving and January 15<sup>th</sup>. Additionally, no approval shall be required for any construction, alteration or addition made by the Declarant.

The Board of Directors may divide the ACC into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. Until one hundred percent (100%) of the Community has been developed and conveyed to purchasers in the normal course of development and sale, the Declarant shall have the right to appoint all members of the ACC,

including all members of the new construction and modifications subcommittees, if the ACC is divided into subcommittees. In the event of a conflict between the two (2) subcommittees, the decision of the new construction subcommittee shall control. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. After the Declarant's right to appoint the members of the ACC has expired, the Board of Directors shall appoint the members of the ACC, or may adopt a resolution making the Board of Directors the ACC. The Board may employ for the ACC architects, engineers, or other Persons necessary to enable the ACC to perform its review. The ACC may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, who shall have full authority to act on behalf of the ACC for all matters delegated. The ACC may, in its discretion, from time to time establish, abolish or amend standards to govern the development of Lots and Units and the design and construction of improvements to a Lot and/or a Unit. The text of such standards and amendments shall be available to each Owner. Such standards shall be binding upon all Owners. A review fee in a reasonable amount may be charged.

Section 2. Applications. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction, which is not in conformance with approved plans. In the event that the ACC fails to approve or to disapprove any application within forty-five (45) 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 architectural standards unless a variance has been granted in writing by the ACC pursuant to Section 11 of this Article.

Section 3. Encroachments onto Common Property. The ACC subject to this Article V may allow encroachments onto the Common Property (or the Common Elements in the case of a Unit) as it deems acceptable.

Section 4. Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the ACC. It is the responsibility of every Owner of a Lot and/or Unit to determine for him or herself what architectural modifications have been made to his or her Lot and/or Unit by any predecessor-in-interest. In the discretion of the ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

Section 5. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Board of Directors or the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, the ACC, or member of any of the foregoing shall be held liable for any injury, damage or loss arising out of the manner or quality of approved construction on or modifications to any Lot or Unit.

Section 6. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the ACC may adopt different architectural standards for different Neighborhoods and for different parts of the same Neighborhood, based on visibility and location of the proposed modification in the Community. The approval of either the Board of Directors or the ACC of any proposals, plans and specifications or drawings





- (m) No trash or construction debris shall be buried on any portion of the Community.
- (n) A mailbox shall be located on each Lot, which mailbox shall conform to the architectural standards and to the rules and regulations of the United States Postal Service.
- (o) No activity that may create erosion or siltation problems shall be undertaken in the Community without the prior written approval of the ACC or its designee of plans and specifications for the prevention and control of such erosion or siltation. The ACC or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, and requiring landscaping as provided for herein. No activity which results in contamination of or damage to any other property in the Community shall be conducted, and each Owner shall be liable for all resulting damages from such activity and for restoration of all property damaged from contamination resulting from or attributable to such activity.

Section 10. Variances.

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

(b) The architectural standards and its enforcement may vary from time to time. These variances shall not constitute a waiver by the ACC or the Board of the right to adopt and enforce architectural standards under this Article. No decision by the ACC or Board shall constitute a binding precedent with respect to subsequent decisions of the ACC or Board. However, nothing in this Article shall permit the ACC or the Board to enforce retroactively its architectural standards against an Owner whose architectural change has been approved under the architectural standards of a previous ACC or Board.

**Article VI**  
**Use Restrictions and Rules**

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions that must be complied with by all Owners and Occupants in the Community. These use restrictions may only be amended in the manner provided in Article XIII, Section 4, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants in the Community until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total eligible Association vote and the consent of Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X). Notwithstanding the above, until such time as one hundred percent (100%) of the Community has been developed and conveyed to purchasers in the normal course of development and sale, no rules and regulations that affect the Declarant may be adopted, modified, or deleted without the written consent of Declarant. As to Units and Unit Owners, these use restrictions are in addition to and not in lieu of use restrictions contained in the Condominium Declaration. In the event of conflict or inconsistency between use restrictions in this Declaration and any use



restrictions in the Condominium Declaration or any Supplementary Declaration, the stricter provision shall control.

Section 2. Use of Property.

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

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

Notwithstanding anything to the contrary stated herein, the Owner of a dwelling located on a Lot in Block 5 of the Subdivision Neighborhood, as shown on the Survey, may use such dwelling for residential purposes as provided in subsection (a) above, and/or for business office uses of the type that: (A) is permitted by applicable zoning ordinance and use restrictions; (B) does not involve the occupation on a daily basis of more than one (1) employee and a maximum of one (1) vehicle parked on the Common Property by such employees per Lot; and (C) does not involve unreasonable visitation of the Lot by clients, customers, employees, suppliers, or other business invitees. Except as otherwise specifically provided for herein, no Owner, Occupant, tenant, visitor, guest or invitee of a Lot being used for business office uses shall have access, ingress, or egress to or through any portion of the Community except for said Lot. The right of an Owner of a dwelling located on a Lot in Block 5 of the Subdivision Neighborhood, as shown on the Survey, to use such dwelling for business office uses as set forth herein shall not be assignable to an Occupant or other third party.

(b) Number of Occupants. The maximum number of Occupants in a dwelling on a Lot or in a Unit shall be limited to two (2) people per bedroom (as such bedrooms are depicted on the original Floor Plans). For the purposes of this subsection (b), efficiency and studio-type Units located on Block 5 of the Community shall constitute a one (1) bedroom Unit. "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling on a Lot or in a Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. If an Owner of a Lot or a Unit is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the

Board the name(s) of the person(s) who will occupy the dwelling on such Lot or the Unit. The designated person(s) to occupy the dwelling on the Lot or the Unit may not be changed more frequently than once every six (6) months.

Section 3. Leasing. The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Section. A Lot may be leased for only those purposes permitted for that particular Lot in accordance with Article VI, Section 2 above. Except for Lots owned by the Declarant, all leases shall have a minimum term of one (1) year and a copy of all leases shall be given to the Board of Directors by the Owner of the Lot within thirty (30) days of entering into the lease. All leases shall require that the lessee acknowledge receipt of a copy of the Declaration, Bylaws and rules and regulations of the Association and shall also obligate the lessee to comply with these documents.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any person living with the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specifically assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

When a Lot Owner (other than the Declarant or a builder or developer who purchases the Lot for the purpose of construction of a residence and resale of the Lot and residence) who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to Owner. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under Article IV herein as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

This Section shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

Section 4. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or architectural standards promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 5. Vehicles and Parking. Vehicles permitted under this Section shall be parked in areas specified herein or in designated areas authorized in writing by the Board. No Owner or Occupant may keep or bring onto the Community more than a reasonable number of vehicles, at any time, as determined by the Board. All vehicles of an Owner or Occupant shall be parked within a garage or on a driveway located on a Lot, or on Limited Common Element parking spaces assigned to a Unit. Owners and Occupants are prohibited from parking on yard areas, along the roadways of the Community, or on any exterior parking space located on the Common Property for any period of time. The doors of garages shall be kept closed at all times, except during times of entry and exit from the garage, or when someone is working in or around the garage.

Notwithstanding anything to the contrary stated herein, each Unit shall have at least one (1) parking space located in the Common Element parking deck (located in the Condominium Neighborhood) assigned as a Limited Common Element, exclusively serving a particular Unit. For so long as Declarant owns a Unit for the purpose of sale, Declarant may sell more parking spaces (which parking spaces shall thereafter be Limited Common Elements assigned to the Unit to which they have been sold) to a Unit Owner and may adopt rules regulating the use of unassigned parking spaces. Such assigned parking spaces are designated Limited Common Elements and may be used by the Owner or Occupants to whom the parking spaces are assigned, and their guests and families.

Notwithstanding anything to the contrary stated herein, all exterior parking spaces located on the Common Property shall be reserved for guest parking; provided, however, a guest vehicle shall not be parked in a parking space reserved for guest parking for more than forty-eight (48) consecutive hours unless prior written consent of the Board is first obtained. Disabled and stored vehicles are prohibited from being parked on any portion of the Community, except in garages or the Common Element parking deck located in the Condominium Neighborhood. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle of an Owner or Occupant shall be considered "stored" if it remains on the Community for fourteen (14) consecutive days or longer without prior written Board permission, and a vehicle of a guest shall be considered "stored" if it remains parked in a parking space reserved for guest parking for more than forty-eight (48) consecutive hours without prior written Board permission.

Boats, trailers, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than Sheriff's, Marshall's, or police officer's vehicles marked as such, are also prohibited from being parked on the Community, except in garages or other areas, if any, that have been designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Community during normal business hours for the purpose of serving any Unit, Lot or the Common Property; provided, however, no such vehicle shall remain on the Common Property overnight or for any purpose unless prior written consent of the Board is first obtained.

If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the person or entity that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the

vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to a Lot, dwelling, Unit or parking space of another Owner or Occupant, is obstructing the flow of traffic, is parked on any grassy area, is parked in a parking space which has been assigned as a Limited Common Element to a Unit, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 6. Garages. No garage may be converted to permanent living space. All garages shall be maintained in such a manner that parking for two (2) motor vehicles is allowed and possible.

Section 7. Animals and Pets. No Owner or Occupant may keep any pets other than generally recognized household pets on any portion of the Community, and no Owner or Occupant may keep more than a total of two (2) generally recognized household pets per Lot or Unit. Notwithstanding the above, a reasonable number of generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each may be kept in Units or in the dwellings located on Lots.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Community, including the Limited Common Elements appurtenant to and serving a Unit, without prior written ACC approval. Notwithstanding the foregoing, pets may be kept in fenced areas approved under Article V or in areas where the pet is restricted by an electronic fence. Pets must be kept on a leash at all times when on the Common Property and on the Lot of another Owner. When on the Common Property, pets must be under voice command or the physical control of a responsible person at all times. Feces left upon the Common Property by pets must be removed by the owner of the pet or the person responsible for the pet. Pets are not allowed on any portion of the Common Elements of the Condominium; provided, however, an Owner or Occupant may walk a pet across the Common Elements to enter or exit the Condominium building.

No potbellied pigs, snakes, pit bulldogs, rottweillers, doberman pinchers, or other animals determined in the Board's sole discretion to be dangerous may be brought onto or kept on the Community at any time. Furthermore, any pet that is permitted to roam free, or in the Board's sole discretion, endangers the health of any Owner or Occupant, makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners or Occupants or to the owner of any property located adjacent to the Community, may be permanently removed by the Board from the Community upon seven (7) days written notice to the owner of such pet. If the Owner or Occupant fails to remove the pet from the Community, the Board may remove the pet. Notwithstanding the foregoing, any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any Community member may be removed by the Board without prior written notice to the pet's owner.

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

such pet within the Community.

Section 8. Signs. No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the ARC except (a) when offering a Lot or residence for sale or for lease, not more than one (1) professionally lettered "For Sale" or "For Rent" sign consistent with the Community-Wide Standard and having a maximum area of four (4) square feet and a maximum height of four (4) feet above ground level, (b) professional security signs consistent with the Community-Wide Standard, (c) any signs required by legal proceedings, and (d) signs erected by Declarant. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs. This Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage. No advertising, directional or vendor signs shall be permitted within the Community except as authorized by the Declarant under Article XII Section 8 of this Declaration.

Section 9. Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Community; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:

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

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

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

In the event of a transfer of a Lot or Unit which includes the satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

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

Section 11. Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from a Lot and a Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except in sealed bags placed in trash cans or proper receptacles designated by the Board for collection. Trash cans and receptacles shall not be placed at the street until twelve (12) hours before pickup and must be removed and stored in a screen area within twelve (12) hours after pickup. Rubbish, trash, garbage, debris or other waste matter of any kind may not be burned within the Community.

Section 12. Recreational Equipment, Woodpiles, Etc. All recreational equipment, including without limitation, hammocks, and playground equipment, garbage cans, woodpiles, and related equipment and other similar items shall be located or screened so as to be concealed from view from any street or road and from adjacent Lots. Notwithstanding anything to the contrary stated herein, portable basketball goals shall be prohibited; provided, however, permanent basketball goals may be placed in the rear yard of a Lot so long as it is concealed from view from any street or road. Any recreational equipment located on the Common Property shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 13. Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.

Section 14. Air Conditioning Units. No window air conditioning units may be installed on any Lot or any Unit. Condensing units for air conditioners shall only be located in the rear or along the side of a residence constructed upon a Lot in the Subdivision Neighborhood and only in locations permitted by the ACC in the Condominium Neighborhood.

Section 15. Fences. No fence or fencing type barrier of any kind, including invisible "Radio Fences" designed to restrain pets, shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, unless the type, fencing material, and location thereof shall have received the prior written consent of the ACC.

Section 16. Utility Lines. Except as may be permitted by the ACC, no overhead utility or cable television lines other than utility lines needed to supply power to homes, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 17. Lighting. Except as may be permitted by the ACC, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one (1) decorative post light, (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative white lights; or (e) front house illumination of model homes, if any.

Section 18. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on any portion of a Lot or the exterior of a Unit. Exterior sculpture, fountains, flags, and similar items must be approved by the ACC; provided, however, the display of flags for generally recognized holidays on which flags are customarily displayed shall be permitted for a period from one (1) week prior to the date of such holiday until one (1) week after the date of such holiday. No awnings, shades or window boxes shall be attached to or otherwise placed on the exterior of any structure on a Lot without the prior written consent of the ACC.

Section 19. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on and in his or her Lot or Unit. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot or 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 discharge 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 Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. 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 Community. Without limiting the

generality of the foregoing, no horn, whistle, siren, bell, amplifier, speaker or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot or Unit unless required by law. However, any siren or device for security purposes shall contain a device that causes it to automatically shut off within fifteen (15) minutes.

Section 20. Unightly or Unkempt Conditions. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken in any part of the Community except within closed garages.

Section 21. Abandoned Personal Property. Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property, Area of Common Responsibility or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property, Area of Common Responsibility or on the rights-of-way located within the Community in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance herewith, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary, the Board may elect to impose fines or use other sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

Section 22. Tree Removal and Improvements or Alterations to the Conservation Area. No trees shall be removed without the prior written consent of the Architectural Control Committee, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees or for safety reasons; (c) trees within ten (10) feet of the residence, driveway, or walkways constructed or to be constructed on the Lot in the Subdivision Neighborhood; or (d) trees within ten (10) feet of the Condominium building, driveways or walkways constructed or to be constructed in the Condominium Neighborhood.

Notwithstanding the above, Lot Owners are prohibited from placing, building or constructing any structure, improvement, fence, wall, garden, statuary or landscaping on the Conservation Area shown on the Survey. The Conservation Area is to be maintained by the Association pursuant to Article VII of this Declaration and no alteration of, clearing, cutting, grading, planting, pruning and/or removal of any vegetation, landscaping, trees, shrubs or bushes in the Conservation Area shall be performed by an Owner or Occupant without the prior written consent of the ACC.

Section 23. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 24. Sight Distance at Intersections. All property located at street intersections and at the intersections of streets and driveways shall be landscaped so as to permit safe sight across the corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 25. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, and approved by the ACC.

Section 26. Subdivision of Lots and Units. No Lot shall be subdivided or its boundary lines changed except the Declarant expressly reserves the right to replat any Lot(s) owned by Declarant. Any such division or replatting of a Lot by the Declarant shall not be in violation of the applicable subdivision and/or zoning regulations. No Unit shall be subdivided into a smaller Unit or Units.

Section 27. Outbuildings and Similar Structures. No structure of a temporary nature, unless approved in writing by the ACC, shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently. However, this Section shall not be construed to prevent Declarant and those engaged in development, construction, marketing, property management or sales from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

Section 28. Use of Common Elements Including Amenities. There shall be no obstruction of the Common Property, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Property without the prior written consent of the Board, except as specifically provided herein. There shall be no gardening or landscaping on the Common Property by Owners or Occupants without the prior written consent of the Board. This Section shall not apply to the Declarant so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X.

Section 29. Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without the prior written consent of the ACC and in no event shall any above-ground swimming pool be permitted.

Section 30. Mailboxes. The Declarant shall provide a mailbox for each Lot. In the event such mailbox is destroyed or damaged, it shall be replaced or restored to its original appearance, unless prior approval is given by the ACC for a different mailbox.

Section 31. Exterior Security Devices. No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

Section 32. Fuel or Water Tanks. No fuel tanks or water tanks shall be stored or maintained upon any Lot in such a manner as to be visible from any street or road or from any other Lot, unless used by Declarant, temporarily, in the ordinary course of developing the Community.

Section 33. Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, and shades or for any other purpose. The side of all window treatments that can be seen at any time from the outside of any structure located on a Lot must be white or off-white.

Section 34. Retaining Walls. No retaining wall of any kind shall be placed, erected, allowed or maintained upon any portion of the Community, including any Lot, unless the type and location thereof shall have received the prior written consent of the ACC. Any retaining wall visible from the street shall be made of brick or stone, and shall be consistent with the architectural style of the structures and improvements located upon such Lot. Walls made of plain concrete or concrete block shall be prohibited.



Section 35. Erosion Control; Contamination. No activity which may create erosion or siltation problems in the Community shall be undertaken on any Lot without the prior written approval of the Board of Directors or its designee of plans and specifications for the prevention and control of such erosion or siltation. Such plans and specifications shall be designed by a professional engineer licensed in the State of Georgia and all costs and expenses related thereto shall be borne exclusively by the Lot Owner. The Board of Directors or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, clean-up activities and requiring landscaping as provided for herein. No activity which results in contamination of or any damage to any stream, water course or any other Lot shall be conducted on any Lot, and each Owner shall be liable for all resulting damages from such activity and for restoration of a property damaged from contamination resulting from or attributable to such activity.

In addition, prior to commencing any improvements on a Lot, the Owner of such Lot and any builders, subcontractors, or other agents of such Owner, shall fulfill their obligations to comply with the requirements of the State of Georgia Department of Natural Resources, Environmental Protection Division ("EPD") and the Permit, as defined in Exhibit "A" attached hereto and incorporated herein by this reference, including, but not limited to the following obligations:

- (a) Submitting a Notice of Intent to the EPD in the manner required by the Permit and applicable law;
- (b) Implementing and complying with those portions of the Erosion, Sedimentation and Control Plan applicable to activities on each Owner's respective lot;
- (c) Executing the Erosion, Sedimentation and Control Plan or portion thereof in accordance with Part VI.G of the Permit; and
- (d) Complying with all inspection, notification, reporting, and record retention obligations relating to the Comprehensive Monitoring Plan as set forth in the Permit and applicable law.

If the Declarant or any governmental regulatory entity determines that an Owner has failed or refused to properly discharge its obligations under this Section 35, Declarant may give such Owner written notice of Declarant's intent to take such action as Declarant deems necessary, in its sole discretion, to maintain the condition of the Lot in compliance with the Permit. Owner shall authorize Declarant to enter upon the Lot to undertake any necessary corrective actions. Notwithstanding the foregoing, Declarant shall only make such entry after providing the violating Lot Owner with written notice of its intent to enter such Lot. The notice shall set forth with reasonable particularity the actions that Declarant intends to perform. Except in an emergency, Declarant shall have a reasonable period after receipt of such notice to promptly remedy the situation to the satisfaction of Declarant.

Furthermore, if Owner refuses or fails to do so within the time period identified in the notice, Declarant may then enter upon Lot to perform the actions specified in the written notice, on behalf of the Association with all such costs being deemed an Association common expense occasioned by the conduct of the violating Lot Owner. The Association then shall assess all such expenses including attorney's fees actually incurred, against the violating Lot Owner pursuant to Article XIII, Section 1 of this Declaration. Additionally, the Association may assess fines against the violating Lot Owner hereunder not to exceed Five Hundred and No/100 Dollars (\$500.00) per incident. All costs incurred by the Association hereunder, including reasonable attorney's fees actually incurred, and any fines assessed hereunder, shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot. Each Owner of a Lot and any builders, subcontractors, or other agents of such Owner,

shall indemnify and hold Declarant harmless against any and all expenses, including attorney's fees and legal expenses, in connection with any claim, cost, damage, fine, suit, other proceedings (including any settlement), or expense reasonably incurred or imposed upon Declarant as a result of any breach of any obligation under this Section 35 or any other violation of the Permit by such Owner or any builders, subcontractors or agents of such Owner.

Notwithstanding any other provisions of this Declaration, during the time in which the Declarant has the authority to appoint the directors and officers of the Association pursuant to Article III, Section 2 of the Bylaws, Declarant may delegate all of its rights, powers and responsibilities set forth in this Section 35 to the Association.

#### **Article VII** **Maintenance; Conveyance of Common Property to Association**

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of (a) all entry features for the Community, including, but not limited to, the landscaping associated with such entry features (whether or not such entry features or landscaping are on a Lot or public right-of-way) and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features, (b) any drainage and detention areas which were originally maintained by the Declarant, to the extent such areas are not maintained on an ongoing basis by a local governmental entity; (c) specialty street signs, if any, originally installed by Declarant whether or not such street signs are on a Lot or public right-of-way, (d) the walking trails in the Community and the ridge as shown on the Survey as part of the "Conservation Area", even though portions of such ridge may be within the boundaries of a Lot; and (e) all roads, streets, alleys and other paved areas in the entire Community.

The Association shall also have the exclusive right and obligation to maintain the front and side lawns of all Lots located within Block 5, and following the initial installation of sod or other final grassing or landscaping of such Lot and residency by the owner or builder of such Lot and residence. Such maintenance of the front and side lawns of Lots shall include the cutting and trimming of grass and the treatment with fertilizers or other chemicals to promote healthy and attractive lawns. The cost of such lawn maintenance shall be assessed only against the Lots located in Block 5 as a specific assessment pursuant to Article IV, Section 6 hereof.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether located within or outside the Community, where the Board has determined that such maintenance would benefit all Owners. This shall include the right of the Association to assume maintenance responsibility with respect to any Neighborhood, in addition to those that may be designated by this Declaration, the Condominium Declaration or by Supplementary Declaration. This assumption of responsibility may take place either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then are being provided is not consistent with the Community-Wide Standard. All costs of such maintenance of a Neighborhood shall be assessed as a Neighborhood Assessment as provided in Article IV, Section 4 hereof.

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

The Association shall perform all maintenance in a manner consistent with the Community-Wide Standard.

Section 2. Owner's Responsibility. Except as provided in Section 1 above and unless such maintenance responsibility is otherwise assumed or assigned to the Association or a Neighborhood pursuant to this Declaration, the Condominium Declaration or any Supplementary Declaration, all maintenance of the Lots and Units and all structures, parking areas, landscaping, and other improvements on a Lot in the Subdivision Neighborhood shall be the sole responsibility of the Owner, who shall maintain such areas in a manner consistent with the Community-Wide Standard and this Declaration.

No Owner shall perform, or permit the performance by any Person other than the Association or its designated agent, of any lawn maintenance on the front and side lawns of a Lot for which the Association has maintenance responsibility. Without limiting the foregoing prohibition or restriction, no Owner shall cut or trim, fertilize or otherwise maintain any front or side lawn areas for which the Association has responsibility. Notwithstanding anything to the contrary stated herein, an Owner shall be permitted to plant flowers and small shrubs in the front and side lawn areas of such Owner's Lot; provided, however, the Association shall not be responsible for the care and maintenance of those flowers and/or shrubs that are part of the original landscaping for the Lot, if any, or that are subsequently planted by an Owner.

In the event that the Board of Directors determines that such areas are not maintained in a manner consistent with the Community-Wide Standard and this Declaration, except in an emergency situation, the Board of Directors shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall state the maintenance, repairs, or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of the notice to complete the maintenance, repair, or replacement. In the event that the maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, the Owner shall begin the work and shall complete it within a reasonable time. If the Board determines that (i) an emergency exists, or (ii) that an Owner has not complied, the Association may provide the maintenance, repair, or replacement at Owner's sole cost and expense, and all costs including reasonable attorneys fees, shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot or Unit.

Section 3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring costs of certain portions of the area to be maintained by the Association under Section 1 of this Article which is within or adjacent to such Neighborhood. Under no circumstances shall a Neighborhood Assessment be imposed for the maintenance, repair or operation of the walking trails or any other recreational amenity that may be added to the Community for the use and enjoyment of all Owners in the Community.

Any Neighborhood having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to covenants affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any such Neighborhood fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Lots or Units within such Neighborhood as provided in Article IV, Section 4 of this Declaration.

Section 4. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest that is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be

maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

**Article VIII**  
**Insurance and Casualty Losses**

Section 1. **Insurance on Common Property.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and other property, if any, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

The Board is authorized to contract with or otherwise arrange to obtain the required insurance coverage through the Declarant and to reimburse Declarant for the cost. Declarant shall be authorized, but not obligated, to purchase the required insurance coverage for the benefit of the Association and the Owners. The coverage shall include the Association as a named insured. The Declarant and Association shall agree upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining the required coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of subsections (b) through (e) below if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be a common expense of the Association. The policies may contain a reasonable deductible, and the deductible amount shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, except as otherwise provided above and shall be governed by the provisions set forth below:

- (a) All policies shall be written with a company authorized to do business in Georgia.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations.
- (c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by the Board of Directors. In conducting such reviews the Board may engage an expert whom in its sole discretion it deems fit.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) ordinance or law coverage, demolition cost coverage and increased cost of construction coverage;

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

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

(iv) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(v) that no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(vi) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vii) that no policy may be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available or if necessary in order to satisfy the requirements of applicable laws. If obtained, the amount of fidelity coverage shall be determined in the Board of Directors' best business judgment, and, if available, shall at least equal three (3) months assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2. Individual Insurance. Each Owner of a Lot shall be obligated to obtain and maintain at all times blanket all-risk casualty insurance on such Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. If reasonably available, the casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners of Lots shall obtain, at a minimum, fire and extended coverage. Each Owner of a Unit shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Condominium Association. The policies required hereunder shall be in effect at all times and Owners shall provide a certificate of such required insurance to the Board of Directors, upon request. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner and the Mortgagee of such Owner.

Section 3. Damage and Destruction -- Insured by Association.

(a) In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims covered under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. The Board of Directors must proceed to repair or reconstruct any damage or destruction to the Common Property on behalf of the Association unless within sixty (60) days after the casualty, it obtains the agreement of at least seventy-five (75%) percent of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X to not repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is not sufficient to cover the cost of repair or reconstruction, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots and/or Units owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be retained by and for the benefit of the Association in an Association account.

In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

Section 4. Damage and Destruction -- Insured by Owners.

(a) Lots. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner within seventy-five (75) days after the damage or destruction. However, where repairs cannot be completed within seventy-five (75) days, they shall begin within the required period and shall be diligently and continuously pursued until their completion. Alternatively, the Owner may decide to demolish and remove all damaged improvements on the Lot within seventy-five (75) days after such damage or destruction.

(b) Units. The repair by an Owner of any damage or destruction to a Unit shall be accomplished in accordance with the Condominium Declaration.

**Article IX**  
**Condemnation**

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after the taking, Owners holding at least seventy-five (75%) percent of the total Association vote other than Declarant and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X) otherwise agree, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are available. The provisions of Article VII, Section 3, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

**Article X**  
**Annexation of Additional Property**

Section 1. Unilateral Annexation By Declarant.

(a) As the owner or, if not the owner, with the consent of the owner, Declarant shall have the unilateral right, privilege, and option from time to time at any time until seven (7) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached and made a part of this Declaration, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the DeKalb County, Georgia, records a Supplementary Declaration describing the property being annexed. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a different effective date is provided in the Supplementary Declaration. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any annexed real property.

(b) The rights reserved to Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained in the Declaration upon the additional land.

Section 2. Other Annexation. Subject to the consent of the owner and the consent of the Declarant (so long as the Declarant has an option to subject additional property to this Declaration as provided above) upon the affirmative vote, or written consent, or any combination thereof, of Owners holding a Majority of the total Association vote, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the DeKalb County, Georgia, records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided in the Supplementary Declaration.

Section 3. Withdrawal of Property. Declarant reserves the right to amend this Declaration at any time so long as it holds an unexpired option to expand the Community pursuant to this Article, for the purpose of removing certain portions of the Community then owned by the Declarant or its affiliates from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community desired to be effected by the Declarant.

**Article XI**  
**Mortgagee Provisions**

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

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

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

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

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

(d) any proposed action that would require the consent of a specified percentage of Mortgage holders.

Section 2. Approval of Action. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this Article XI, Section 2(a) other than personal property of the Association;

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

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this Article XI, Section 2(c));

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.



First Mortgagees, after written notice to the Association, may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Common Property.

Section 4. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 5. VA/HUD Approval. As long as Declarant has the right to appoint and remove the directors of the Association, the following actions shall require the prior approval of the VA so long as the VA is guaranteeing any Mortgage in the Community, and HUD so long as HUD is insuring any Mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article X, Section 1 hereof pursuant to a plan of annexation previously approved by the VA and/or HUD, as applicable; dedication of Common Property to any public entity; mortgaging of Common Property; mergers and consolidations; dissolution of the Association; and material amendment of the Declaration, the Bylaws, or the Articles of Incorporation of the Association.

Section 6. Applicability of Article VIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Section 8. Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, VA or HUD subsequently delete any of their respective requirements, which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 9. Liability for Common Expenses. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

Section 10. Financial Statement. Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

Section 11. Sales and Leases. Notwithstanding anything to the contrary herein contained, the provisions of this Declaration shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

## **Article XII** **Easements**

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and adjacent portion of the Common Property, as between adjacent Lots and as between each Unit and adjacent portion of the Condominium common element due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property, as between adjacent Lots, or as between each Unit and the Condominium common elements, as the case may be, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, occupant, or the Association caused the encroachment.

### Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot and every Owner of a Unit shall have a right and easement of entry and exit, use and enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to his or her Lot or Unit, subject to the following provisions:

(i) The right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions of the Common Property at certain designated times by an Owner, his or her family, tenants, guests, and invitees or by a separate group or entity;

(ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his or her Lot or Unit which is hereby provided for remains unpaid; and, for a reasonable period of time for a violation of the Declaration, Bylaws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or for constructing, repairing, or improving any facilities located or to be located on the Common Property, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property. However, the Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges reserved or established for the benefit of Declarant, any Lot or Lot Owner, any Unit or Unit Owner or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot, Unit or other property located within the Community (Any provision in this Declaration or in any Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights in the Mortgage by the holder of the Mortgage in the event of a default shall not cancel or terminate any rights, easements or privileges reserved or established in this Declaration for the benefit of Declarant, any Lot or Lot Owner, any Unit or Unit Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot, Unit or other property located within the Community.); and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to any conditions agreed on by the members of the Association.

(b) Any Owner may delegate his or her right of use and enjoyment in and to the Common Property to the members of his or her family residing in the Lot or Unit, tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of the Owner's Lot or Unit, if leased.

Section 3. Easements for Utilities. There is reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or Board, as applicable, shall have the right to grant such easement.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XIII, Section 2, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right to enter to cure any condition, which may increase the possibility of a fire, slope erosion, or other hazard if an Owner or Occupant does not cure the condition after request by the Board. For purposes of this Section, a water or other utility leak, fire, strong foul odor, obvious insect infestation, or sounds indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry onto a Lot, into a home on a Lot and into any Unit. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a property shall exist.

Section 5. Easement for Association Maintenance. Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article VII, including, without limitation, an easement over Lots containing the ridge, as shown on the Survey, as part of the "Conversation Area," for maintenance of such Conservation Area and an easement over Lots to conduct front and side lawn maintenance as set forth in Article VII hereof. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect the property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 6. Easement for Entry Features and Street Signs. There is hereby reserved to the Declarant, the Association, and the designee of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

Section 7. Public in General. The easements and rights created in this Article XII do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the DeKalb County, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community which, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

Section 8. Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation of the Association, use restrictions, rules and regulations, architectural standards, and any amendments thereto, so long as Declarant owns any property in the Community for development and/or sale, Declarant reserves an easement across all property in the Community for Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's development, construction, and sales activities related to property described on Exhibits "B" and "C" to this Declaration, including, but without limitation, (a) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot, (b) the right to tie into any portion of the Community with driveways, parking areas and walkways, (c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community, (d) the right to grant easements over, under, in or on the Community, including, without limitation, the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community, (e) the right to carry on sales and promotional activities in the Community, (f) the right to erect and maintain signs, and (g) the right to construct and operate business offices, construction trailers, model residences, and sales offices. Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as hereinabove provided.

### **Article XIII**

#### **General Provisions**

Section 1. Enforcement. The Community shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots, Units and the Common Property; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership. Every Owner and Occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Lot or Unit Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot or Unit, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Lot or Unit. In the event that any Occupant of a Lot or Unit violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and Occupant, and the fine shall first be assessed against such 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 Association, and the fine shall be an assessment and a lien against the property until paid. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Common Property (provided, however, if an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association, suspension of the right to vote and the right to use the Common Property shall be automatic); unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (b) below.

(a) Notice. If any provision of the Declaration, Bylaws or any rule or regulation of the Association is violated, the Board shall send the violator written notice identifying the violation and fine(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or fine(s) or to request reconsideration of the fine(s). Fine(s) may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

Section 2. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 1 of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a Lot or Unit or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations; provided, however, written notice shall be given to the Owner of the Lot or Unit at least two (2) days prior to the time that any items of construction are altered or demolished. All costs of self-help, including

reasonable attorney's fees, shall be assessed against the violating Unit Owner and shall be collected as provided herein for the collection of assessments. Furthermore, the Board of Directors shall have the authority to record in the DeKalb County, Georgia land records notices of violation of the provisions of the Declaration, the Bylaws and rules and regulations.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless at least fifty-one (51%) percent of the record Owners execute an agreement to prevent renewal of the covenants and such agreement is recorded and an attorney's affidavit confirming ownership of the Lots and Units or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting termination must be recorded within the year immediately preceding the beginning of any renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the property subject to this Declaration; (c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the property subject to this Declaration; or (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the property subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot or Unit unless the Owner consents to the amendment in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article X, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner, nor shall it adversely affect title to any Lot or Unit without the consent of the affected Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the total eligible Association vote and the consent of the Declarant (so long as Declarant owns a Unit primarily for purposes of sale). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of this Declaration which reserves, grants, or exempts special rights, easements or exemptions to the Declarant shall be amended or removed without the Declarant's prior written consent so long as the Declarant owns any property in the Community, or which is subject to annexation to the Community, primarily for development and/or sale.

Section 5. Security. **THE ASSOCIATION OR THE DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SECURITY IN THE COMMUNITY. HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR THE DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY FOR THE COMMUNITY.**



or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director, officer or committee member of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

Section 14. Books and Records.

(a) All members of the Association and any institutional holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the member wishes to inspect and copy:

- (i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (ii) its Bylaws or restated Bylaws and all amendments to them currently in effect;
- (iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (iv) resolutions adopted by either its members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of members or any class or category of members;
- (v) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;
- (vi) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;
- (vii) a list of the names and business or home addresses of its current directors and officers; and
- (viii) its most recent annual report delivered to the Secretary of State.

(b) A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

- (i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under subsection 16(a);



- (ii) accounting records of the Association; and
- (iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member.

Section 15. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy, the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

Section 16. Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot or Unit, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot or Unit and such other information as the Board may reasonably require.

Section 17. Agreements. Subject to the prior approval of Declarant (so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 18. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

Section 19. Variances. Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 5<sup>th</sup> day of February, 2003.

**DECLARANT:** LAKE CLAIRE DEVELOPMENT, LLC  
a Georgia limited liability company

By: *John P. Willis* (SEAL)  
John P. Willis, Managing Member

Signed, sealed, and delivered  
this 5<sup>th</sup> day of February, 2003  
in the presence of:

*Elizabeth N. Proctor*  
Witness  
[NOTARY SEAL]  
EXPIRES  
GEORGIA  
JAN. 9, 2004  
Notary Public  
[NOTARY SEAL]  
FULTON COUNTY

## EXHIBIT "A"

### Definitions

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

(a) "Architectural Control Committee" or "ACC" shall mean the committee established to exercise the architectural review powers set forth in Article V hereof and Paragraph 13 of the Condominium Declaration.

(b) "Area of Common Responsibility" shall mean and refer to the Common Property (except for those portions of the Common Property which another Person is required to maintain under any easement, cost sharing agreement or covenant), together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any Neighborhood become the responsibility of the Association. The Area of Common Responsibility shall include but not be limited to all open space, roads, streets, paved areas and sidewalks in the Community, all fences, walls and retaining walls on the Common Property, the entry feature, mail kiosk, bus shelter, walking trails and the "Conservation Area" shown on the Survey. The office of any property manager employed by or contracting with the Association, if located in the Community, or any public rights-of-way within or adjacent to the Community, may be part of the Area of Common Responsibility.

(c) "Association" shall mean Sutherland Place Community Association, Inc., a nonprofit Georgia corporation, its successors and assigns.

(d) "Block" shall mean the portions of the Community, as shown on the Survey, that have been designated for certain types of construction of improvements.

(e) "Board of Directors" or "Board" shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

(f) "Bylaws" shall refer to the Bylaws of Sutherland Place Community Association, Inc., attached to this Declaration as Exhibit "D" and made a part of this Declaration.

(g) "Common Property" shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located on the property, now or in the future owned by the Association.

(h) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant by Supplementary Declaration of all or any portion of the real property described in Exhibit "C"; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property, but shall always include the Subdivision Neighborhood and the Condominium Neighborhood.

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

(j) "Condominium" shall mean that condominium development created by recordation of the Declaration of Condominium for Sutherland Place in the DeKalb County, Georgia records, as may be

amended from time to time ("Condominium Declaration"). The Condominium shall be operated and administered by Sutherland Place Condominium Association, Inc., a Georgia non-profit corporation ("Condominium Association").

(k) "Condominium Neighborhood" shall mean only those portions of the Community as are submitted to the Condominium Declaration, and shall be comprised of Block 4 of the Community as may be shown on the Survey.

(l) "Conservation Area" shall mean those conservation easement areas located on Lots and as may be shown on the Survey.

(m) "Declarant" shall mean and refer to Lake Claire Development, LLC, a Georgia limited liability company, and such of its successors-in-title who shall (i) acquire, from a predecessor "Declarant," and for the purpose of development or sale, all or any portion of the real property described in Exhibit "B" or "C" hereto, and (ii) be designated as the "Declarant" in the deed of transfer by which such successors-in-title shall so acquire its interest in such real property or in a separate document transferring the rights of the Declarant, recorded in the DeKalb County, Georgia records.

In all events there shall only be one "Declarant" at any one time; in no event shall more than one Person have the right to exercise the power and authority of the "Declarant" at any one time.

(n) "Lot" shall mean any portion of the Subdivision Neighborhood, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, an attached or detached residence for a single family as may be developed, used and defined as herein provided or as provided in Supplementary Declarations covering all or any part of the Community.

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

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

(q) "Mortgagee" shall mean the holder of a Mortgage.

(r) "Neighborhood" shall mean the Subdivision Neighborhood and the Condominium Neighborhood each a separately denominated residential living area within the Community.

(s) "Neighborhood Assessments" shall mean assessments levied against the Lots in the Subdivision Neighborhood or against the Units in the Condominium Neighborhood to fund expenses incurred or anticipated to be incurred by the Association for the benefit of only the Owners within such particular Neighborhood.

(t) "Occupant" shall mean any Person staying overnight in a dwelling on a Lot or in a Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such Property.

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

(v) "Permit" shall mean the National Pollutant Discharge Elimination System Permit for Storm Water Discharges Associated with Construction Activity, General Permit No. 100000 issued by the State of Georgia, Department of Natural Resources Environmental Protection Division, or any substitute for or amendment thereof.

(w) "Person" shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(x) "Subdivision Neighborhood" shall mean all portions of the Community, except the property submitted to Condominium Declaration, and shall be comprised of Blocks 1, 2, 3 and 5 of the Community, collectively, as shown on the Survey.

(y) "Supplementary Declaration" shall mean an amendment or supplement to this Declaration, including, without limitation, to Condominium Declaration, which subjects additional property to this Declaration or imposes additional restrictions and obligations on the property, or both.

(z) "Survey" shall mean the Final Plat for Sutherland Place, as amended, recorded in the DeKalb County, Georgia records.

(aa) "Unit" shall mean that portion of the Condominium Neighborhood intended for individual ownership and use but shall not mean the Condominium common elements as more particularly described in the Condominium Declaration.

EXHIBIT "B"

Property Submitted

Lots 1, 2, 3, 4, 21, 22, 23, 24, 25, 26, 41, 42, 43, 44, 45, 46, and 47 located on ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 211 of the 15<sup>th</sup> District of DeKalb County, Georgia, and being more fully described as all of the real property shown and described in that certain plat for Sutherland Place, prepared by Frontline Surveying & Mapping, Inc. dated DECEMBER 13, 2006 and recorded at Plat Book 133, Page(s) 100-100. DeKalb County, Georgia records.

**EXHIBIT "C"**

**Additional Property That May Unilaterally  
Be Submitted by Declarant**

All that tract or parcel of land lying and being in Land Lot 211 of the 15<sup>th</sup> District of DeKalb County, Georgia.

**EXHIBIT "D"**

**BYLAWS  
OF  
SUTHERLAND PLACE COMMUNITY ASSOCIATION, INC.**

**WEISSMAN, NOWACK, CURRY & WILCO, P.C.  
Attorneys**

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



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**BYLAWS**  
**OF**  
**SUTHERLAND PLACE COMMUNITY ASSOCIATION, INC.**

**Article I**  
**Name, Membership, Applicability, and Definitions**

Section 1. **Name.** The name of the Association shall be Sutherland Place Community Association, Inc. ("Association").

Section 2. **Membership.** The Association shall have one class of membership, as is more fully set forth in the Declaration of Protective Covenants for Sutherland Place ("Declaration"). The provisions of the Declaration pertaining to membership are by this reference made a part of these Bylaws.

Section 3. **Definitions.** The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

**Article II**  
**Association: Meetings, Quorum, Voting, Proxies**

Section 1. **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at another place convenient to the members as determined by the Board of Directors.

Section 2. **First Meeting and Annual Meetings.** An annual or special meeting shall be held within one (1) year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur at least sixty (60) days before the close of the Association's fiscal year.

Section 3. **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by Owners holding at least twenty-five percent (25%) of the total eligible Association vote. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

Section 4. **Notice of Meetings.** It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of record of each Lot and each Unit a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Lot or Unit, he or she shall have designated by notice in writing to the Secretary such other address. The mailing of such notice or delivery of such notice to the residence located on the Lot or to the Unit (as the case may be) in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) nor more than thirty (30) days before a special meeting and not less than twenty-one (21) nor more than sixty (60)

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days before an annual meeting.

Section 5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 7. Voting. The voting rights of the members shall be as set forth in the Declaration, and these voting rights are specifically incorporated in these Bylaws.

Section 8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot or Unit, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 9. Quorum. The presence, in person or by proxy, of Owners holding at least one-third (1/3) of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 10. Action Taken Without a Meeting. In the Board's discretion, any action that may be taken by the Association members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every member entitled to vote on the matter.

(a) Ballot. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) Written Consent. Approval by written consent shall be valid only when the number of written consents setting forth the actions taken is received and equals or exceeds the requisite majority of the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by the Declarant, if required. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the members is approved by written consent hereunder, the Board shall issue written notice of such approval to all members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration or Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

**Article III**  
**Board of Directors: Number, Powers, Meetings**

**A. Composition and Selection.**

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Except for directors appointed by the Declarant hereunder, the directors shall be the Owners or the spouses, cohabitants or members of such Owners; provided, however, no Owner and his or her spouse or cohabitant may serve on the Board at the same time, and no co-owners may serve on the Board at the same time. Except for directors appointed by the Declarant, all directors must reside in the Condominium. No persons shall be eligible to be elected to or continue to serve on the Board of Directors if they are shown on the books and records of the Association to be more than sixty (60) days delinquent in the payment of any assessment or charge by the Association. Directors shall not be eligible to serve more than three (3) consecutive two (2) year terms without first resigning from the Board for a time period which shall be the lesser of: (a) one (1) year; or (b) the period of time from the end of one (1) annual meeting of the Association to the beginning of the next annual meeting of the Association.

Section 2. Directors Appointed by Declarant. Declarant shall have the right to appoint or remove all members of the Board of Directors and all officers of the Association until such time as the first of the following events shall occur: (a) the expiration of ten (10) years after the date of the recording of the Declaration; (b) the date upon which seventy-five percent (75%) of all Lots and Units have been conveyed by Declarant to Owners other than a person constituting the Declarant; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Unit, vests in the Declarant authority to appoint and remove directors and officers of the Association. The directors and officers appointed by the Declarant need not be Owners or Occupants in the Community. The name of the initial director selected by the Declarant is set forth in the Articles of Incorporation of the Association.

Section 3. Number and Qualification of Directors. The Board shall consist of one (1) Person during the period in which the Declarant has the right to appoint directors and officers as described in Section 2 of this Article. After the Declarant's right to appoint directors and officers terminates, the Board shall consist of five (5) directors. One (1) director shall be elected from either Block 1 or Block 2 of the Community, as shown on the Survey; one (1) director shall be elected from Block 3 of the Community, as shown on the Survey; one (1) director shall be elected from Block 4 of the Community, as shown on the Survey; one (1) director shall be elected from Block 5 of the Community, as shown on the Survey; and one

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(1) director shall be elected at large from any Block within the Community.

Section 4. Nomination of Directors. Except with respect to the director appointed by the Declarant, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairperson, who shall be a member of the Board of Directors, and three (3) or more members of the Association, with at least one (1) representative from the Condominium Neighborhood and one (1) representative from the Subdivision Neighborhood. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting to serve a term of one (1) year or until their successor are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled. The Nominating Committee shall nominate separate slates for the director to be elected at large by all members and for the directors to be elected by and from the Blocks of the Community as set forth in Section 3 above. Nominations for each slate shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 5. Election and Term of Office. Not later than thirty (30) days after termination of the Declarant's right to appoint directors and officers as described in Section 2 of this Article, the Association shall call a meeting to be held at which Owners shall elect five (5) directors. The terms of the one (1) director elected from Block 1 or 2, the one (1) director elected from Block 4 and the director at large shall expire two (2) years after the first annual meeting following termination of the Declarant's right to appoint directors, and the terms of the two (2) other directors elected from Blocks 3 and 4, respectively, shall expire one (1) year after that annual meeting. At the expiration of the first term of office of each member of the initial Board of Directors, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

At each annual meeting of the membership, directors shall be elected to succeed those directors whose terms are expiring. Each member shall be entitled to cast one (1) vote with respect to each vacancy to be filled from each slate on which the member is entitled to vote. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected.

Section 6. Removal of Directors. At any regular or special meeting of the Association duly called, any one (1) or more of the members of the Board of Directors may be removed, with or without cause, by Owners holding a Majority of the total eligible Association vote to elect said director and a successor may then and there be elected by the members entitled to elect that director in order to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten (10) days notice of the calling of the meeting and its purpose and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than sixty (60) days may be removed by a Majority vote of the directors at a meeting, a quorum being present. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor. Except for replacement of at-large directors, any director appointed by the Board shall be selected from the Block of the Community represented by the director who vacated the position and shall

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serve for the remainder of the term of that director. This Section shall not apply to directors appointed by Declarant.

Section 7. Vacancies. Vacancies on the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. Each director so selected shall serve the unexpired portion of the term of his or her predecessor.

Section 8. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority of the total eligible Association vote. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

Section 9. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed but shall not be permitted to discuss the proposed contract.

#### B. Meetings.

Section 10. Organization Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days at the time and place determined by the Board.

Section 11. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of the meetings.

Section 12. Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) by facsimile; or (e) by telegram, charges prepaid. All notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, facsimile or telegraph company shall be given at least forty-eight (48) hours before the time set for the meeting.

Section 13. Waiver of Notice. The transactions of any meeting of the Board of Directors, however  
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called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed to have been given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 14. Quorum of Board of Directors. At all meetings of the Board of Directors, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 15. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors or officers may not participate in any discussion or deliberation unless expressly so authorized by the Board.

Section 16. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 17. Action Without A Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a Majority of the directors.

Section 18. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors participating by telephone shall be deemed to be present at such meeting for quorum and other purposes. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

#### C. Powers and Duties.

Section 19. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall

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have the power to and be responsible for the following, by way of explanation, and not limitation:

(a) preparing and adopting an annual budget in which there shall be established the contribution of each Owner to the common expenses;

(b) making assessments to defray the common expenses and neighborhood expenses, if any, establishing the means and methods of collecting the assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost;

(j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and

(l) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominiums, or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 20. Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to 149731 / 8209.003

perform such duties and services as the Board of Directors shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

Section 21. Borrowing. The Board of Directors shall have the power to borrow money for any lawful purpose including, without limitation, repair or restoration of the Common Property and facilities, without the approval of the members of the Association. However, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, or the total amount of such borrowing exceeds or would exceed Ten Thousand Dollars (\$10,000.00) outstanding debt at any one time.

Section 22. Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

- (a) Notice. Written notice shall be served upon the violator specifying:
  - (i) the nature of the violation and the fine imposed;
  - (ii) that the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine imposed;
  - (iii) the name, address and telephone number of a person to contact to challenge the fine;
  - (iv) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and
  - (v) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.
- (b) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

#### **Article IV** **Officers**

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association under Article III, Section 2 of these Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the

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