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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE COMMUNITY AT HERITAGE POINTE**

Liberty County, Georgia

Published

By

Dryden Enterprises, Inc., a Georgia Corporation

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Dated as of March 26, 2020

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NOTICE: THIS INSTRUMENT DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM WITHIN THE MEANING OF THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70 ET SEQ., AND THE ASSOCIATION REFERRED TO HEREIN SHALL NOT BE SUBJECT TO THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220 ET SEQ.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COMMUNITY AT HERITAGE POINTE

Dated as of March 26, 2020

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a Georgia corporation

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EXHIBITS

Exhibit "A" Description of Community

NOTE: This Table of Contents is not a substantial part of the Declaration to which it is attached and is provided only for convenience of reference.

STATE OF GEORGIA

COUNTY OF LIBERTY

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE COMMUNITY AT HERITAGE POINTE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COMMUNITY AT HERITAGE POINTE (hereinafter referred to as the "Declaration") is made and published as of the 26th day of March, 2020, by **DRYDEN ENTERPRISES, INC.** a limited liability company formed and existing under the laws of the State of Georgia, the owner of the hereafter described real property (hereinafter referred to as "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property lying in Liberty County, Georgia commonly known as "THE COMMUNITY AT HERITAGE POINTE" and being more particularly described on the attached **Exhibit "A"**, which by this reference is made a part hereof for all purposes (as hereinafter defined, the "**Community**"); and

WHEREAS, Declarant desires to subject the Community to the covenants, conditions, restrictions, and easements hereinafter set forth for the purpose *inter alia* of protecting the value and desirability of said Community, and establishing a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Community; and

WHEREAS, in furtherance of such purposes, Declarant has caused or intends to cause the Heritage Pointe Subdivision Homeowners Association, Inc. to be formed as a Georgia non-profit corporation to own, operate and maintain all Common Areas, as defined below, within the Community and to administer and enforce the provisions of the Governing Documents of said Community.

NOW THEREFORE, incorporating the foregoing recitals, and for and in consideration of the benefits to be derived by Declarant and each and every subsequent owner of the Community, or any portion thereof, Declarant hereby creates and establishes the covenants, conditions, restrictions, and easements set forth herein, and declares that the real property constituting the Community as described in **Exhibit "A"** hereto and any additional property subjected to this Declaration by Supplemental Declaration shall be held, transferred, sold, conveyed, used, occupied and mortgaged and otherwise encumbered subject to said covenants, conditions, restrictions, and easements in accordance with the provisions of this Declaration.

This instrument does not and is not intended to create a condominium within the meaning of the Georgia Condominium Act, O.C.G.A. § 44-3-70 *et seq.*, and the Association, as defined herein, shall not be subject to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 *et seq.*

ARTICLE 1
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. Definitions. Certain capitalized words and terms used in this Declaration may be defined in the text hereof. In addition to the words and terms defined elsewhere herein, the following words and terms are defined terms under this Declaration and shall have the meanings ascribed to them herein below:

"ARC" shall mean the Architectural Review Committee, as described in Section 9.02(b) hereof.

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

"Articles of Incorporation" or **"Articles"** shall mean the Articles of Incorporation of the Association, as filed with the Secretary of State of the State of Georgia.

"Association" shall mean The Community at Heritage Pointe HOA, Inc., a Georgia non-profit corporation, its successors or assigns.

"Board of Directors" or **"Board"** shall mean the body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Georgia corporate law.

"Builder" shall mean any Person who purchases one (1) or more Lots for the purpose of constructing improvements thereon for later sale to consumers or who purchases one (1) or more parcels of land within the Community for further subdivision, development, and/or resale in the ordinary course of such Person's business, and identified by the Declarant in writing as a "Builder" for purposes of this Declaration. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot (i) immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers, or (ii) upon written notice to such Person from the Declarant terminating such Person's status as a "Builder" hereunder.

"Bylaws" shall mean the Bylaws of the Association, as the same may be amended or supplemented from time to time.

"Class "A" Members" shall mean those Members of the Association defined in Section 3.02(a) of this Declaration.

"Class "B" Member" shall mean the Declarant as set forth in Section 3.02(b) of this Declaration.

"Common Area" shall mean all real and personal property, including but not limited to easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

"Common Expenses" shall mean the actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Except as otherwise authorized by this Declaration, Common Expenses shall not include any expenses incurred during the Development Period for initial development, original construction, initial installation of infrastructure, original capital improvements, or other new construction costs unless approved by a Majority of the total Class "A" votes of the Association.

"Community" shall mean the real property described on Exhibit "A," together with such additional property as may be subjected to this Declaration in accordance with Article 7.

"Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Community as initially established by the Declarant. After the Development Period terminates, such standard may be more specifically determined by the Board of Directors and the ARC as provided herein.

"Declarant" shall mean DRYDEN ENTERPRISES, INC., a Georgia corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" (or any additional property submitted to this Declaration) for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. Upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease to the extent set forth in the instrument formalizing such designation, it being understood that as to all of the Community, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" at any one time.

"Development Period" shall mean the period of time defined in Section 13.01 hereof during which the Declarant shall be afforded special privileges, rights, immunities, exceptions and other preferential treatment.

"General Assessment" shall mean assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.01 and 8.03 of this Declaration.

"Governing Documents" shall mean and refer collectively to this Declaration and any applicable Supplemental Declaration, the Bylaws, the Articles, the Standards, and the Use Restrictions and Rules, and all additional covenants governing any portion of the Community, as

each may be amended from time to time.

"Lot" shall mean a portion of the Community, whether improved or unimproved, which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records by Declarant with respect to any portion of the Community, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Areas or property dedicated to the public. In the case of a portion of the Community intended and suitable for subdivision into single-family lots but as to which no subdivision plat has been filed, such property shall be deemed to be a single Lot until such time as a subdivision plat is filed of record with respect to all or a portion of the property. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and any portion not platted shall continue to be treated as a single Lot.

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

"Member" shall mean a Person subject to membership in the Association pursuant to Article 2 of this Declaration.

"Mortgage" shall mean a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

"Mortgagee" shall mean a beneficiary or holder of a Mortgage.

"Nuisance" shall mean, but not be limited to, any usage of a Lot or other portion of the Community that:

- A. so annoys, disturbs or affects any Owner or occupant of any other Lot or the owners or occupants of lands contiguous to the Community so as to obstruct or interfere with the reasonable or compatible use of such other Lot or property or so as to render usage of the Lot dangerous or damaging to Persons or property thereon;
- B. violates federal, state, county or municipal law or other governmental regulation;
- C. violates, in whole or in part, the terms and conditions of this Declaration;
- D. emits dust, fumes, odors, dirt, or cinders into the atmosphere or discharges liquid, solid waste or other matter onto any other Lot or waterway, and which in the opinion of the ARC, may adversely affect the health, safety, comfort of, or intended use of the Community; or
- E. emits vibration, noise, sound or disturbance which, in the opinion of the ARC, is objectionable or harmful due to intermittence, beat, frequency, strength, shrillness, or volume.

"Owner" shall mean one or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severably obligated to perform the responsibilities of such Owner.

"Person" shall mean a natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person, or any other legal entity.

"Pond(s)" shall mean any pond, detention or retention facility, drainage facility, or other body of water located within the Community and made a part of the Common Area, whether used for recreational purposes or otherwise.

"Public Records" shall mean the Office of the Clerk of the Superior Court of Liberty County, Georgia, or such other place which is designated as the official location for the recording of deeds and similar instruments affecting title to real estate in Liberty County, Georgia.

"Special Assessment" shall mean assessments levied in accordance with Section 8.05 of this Declaration.

"Specific Assessment" shall mean an assessments levied in accordance with Section 8.06 of this Declaration.

"Standards" shall mean those architectural standards and design guidelines and procedures applicable to all or any portion of the Community promulgated and administered pursuant to Article 9 hereof.

"Supplemental Declaration" shall mean an instrument filed in the Public Records pursuant to Article 7 which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

"Use Restrictions and Rules" shall mean those use restrictions and rules affecting the Community, which may be adopted, modified and repealed as set forth in Article 10. The initial Use Restrictions and Rules are set forth in this Declaration.

Section 1.02. Rules of Construction. For all purposes of this Declaration, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

(a) "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Declaration as a whole and not solely to the particular portion thereof in which any such word is used;

(b) the use of masculine, feminine, or neuter gender is for convenience only and shall be deemed and construed to include correlative words of the masculine, feminine, or neuter gender, as appropriate;

(c) the terms defined in this Article shall have the meanings assigned to them and include the plural as well as the singular, and the corporations, partnerships, individuals, or other legal entities described herein shall in all instances be assumed as though each is fully expressed;

(d) all references herein to particular "Articles," "Sections," and other subdivisions are references to the designated articles, sections, and other subdivisions of the Declaration;

(e) the table of contents, the titles of articles, and the headings of sections of this Declaration are solely for convenience of reference, are not a part of this Declaration, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions; and

(f) "including" or "include" means including without limitation, and "day" shall refer to calendar days; provided that if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall automatically be extended to the close of business on the next regular business day (unless otherwise provided herein).

ARTICLE II PROPERTY RIGHTS

Section 2.01. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

(a) This Declaration and all other Governing Documents, as well as any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association or otherwise appearing in the Public Records with respect to the Community or any part thereof prior to any such conveyance;

(c) The right of the Board and the membership to adopt, amend and repeal rules pursuant to Article 10 regulating the use and enjoyment of the Common Area, including rules limiting the number of or prohibiting the use by guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner to use all or any portion of the Common Area pursuant to the Governing Documents;

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

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

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

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

(i) All rights and privileges of the Declarant set forth in the Governing Documents, including the right of the Declarant to use such property during the Development Period without payment or charge for such purposes as Declarant, in its sole discretion, deems necessary and proper.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot; provided that the Owner shall remain responsible for payment of all assessments and other charges as provided herein.

Section 2.02. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

Section 2.03. Condemnation. If any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine. In this connection, the Association, acting through the Board, shall be sole representative with respect to condemnation proceedings concerning the Common Area and shall act as attorney-in-fact for all Owners in such matters.

Section 2.04. Ponds. All Ponds shall be exclusively utilized for storm water management and other similar utility purposes, and only as expressly and specifically approved by the Declarant in writing. ALL PERSONS, INCLUDING ANY OWNER, SHALL ASSUME ALL RISK OF LOSS, DAMAGE, DEATH, OR INJURY (OF WHATEVER NATURE) THAT MAY BE SUSTAINED BY SUCH PERSONS WHILE IN THE VICINITY OF THE PONDS. Under no circumstance shall the Declarant, the Association, any Builder, or any Person acting on their behalf be liable for the unauthorized uses of the Pond by any Person, including, without limitation, any Owner or an Owner's family, invitees, lessees, or licensees. IN THIS CONNECTION, EACH OWNER, BY VIRTUE OF ITS MEMBERSHIP IN THE ASSOCIATION, DOES HEREBY AGREE TO INDEMNIFY AND HOLD DECLARANT, THE ASSOCIATION, AND ANY BUILDER (TO ALSO INCLUDE DECLARANT'S, THE ASSOCIATION'S, AND ANY BUILDER'S OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS, AS THE CASE MAY BE) HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, ACTIONS, SUITS, DEMANDS, JUDGMENTS, COSTS, PENALTIES, LOSSES, DAMAGES OR EXPENSES (INCLUDING BUT NOT LIMITED TO LITIGATION EXPENSES AND REASONABLE ATTORNEYS' FEES) OF EVERY KIND OR NATURE, WHETHER KNOWN OR UNKNOWN, SUSTAINED BY SUCH OWNER'S FAMILY, GUESTS, LESSEES, INVITEES, OR REPRESENTATIVES RELATING OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, OWNER OR OWNER'S FAMILY, GUESTS, LESSEES, LICENSEES, AND REPRESENTATIVES BEING ON OR ABOUT, OR USING, THE PONDS (OR ANY ONE OF SUCH PONDS). EACH OWNER, ON BEHALF OF ITSELF AND ITS FAMILY, GUESTS, LESSEES, INVITEES, AND REPRESENTATIVES, ALSO HEREBY RELEASES AND DISCHARGES DECLARANT, THE ASSOCIATION, ANY BUILDER (TO ALSO INCLUDE DECLARANT'S, THE ASSOCIATION'S, AND ANY BUILDER'S OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS, AS THE CASE MAY BE) FROM THOSE MATTERS WHICH OWNER HAS INDEMNIFIED SELLER HEREINABOVE, AND COVENANTS NOT TO SUE SAID PERSONS IN CONNECTION WITH THE SAME.

Section 2.05. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across the Ponds or the Common Area from Lots will be preserved without impairment. Without limiting the generality of the foregoing, the Declarant and the Association shall have no obligation to prune or thin trees or other landscaping, and shall have the right to add trees and other landscaping within the Community.

Section 2.06. Zoning Conditions. The Community is subject to and shall be governed by all applicable zoning and land use regulations and other restrictions, laws, ordinances, and regulations imposed by governmental bodies having jurisdiction over the Community and its use. No Owner or any other Person may apply for or join in an application to amend, vary or modify the zoning ordinance applicable to, or rezone or apply for any zoning variance or waiver, as to all or any portion of the Community without the prior written consent of Declarant. Notwithstanding the foregoing, Declarant may apply for such rezoning as to any

portion of the Community owned by it at any time during the Development Period.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 3.01. Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions, if any, on voting set forth in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

Section 3.02. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Lot in which they hold the interest required for membership hereunder; provided, there shall be only one (1) vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 8.10.

In any situation where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and notify the Secretary of the Association in writing prior to the vote being taken. Absent such notice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

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

(i) within one hundred eighty (180) days after 100% of the property described in Exhibit "A" and Exhibit "B" has been developed and conveyed to Persons other than Declarant;

(ii) December 31, 2038; or

(iii) when Declarant voluntarily terminates such membership earlier by filing a written notice of termination in the Public Records.

At such time, the Class "B" membership shall terminate, and the Declarant shall become a Class "A" Member entitled to one (1) Class "A" vote for each Lot which it owns.

ARTICLE IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 4.01. Function of Association. Subject to the rights of Declarant and the other provisions of this Declaration, the Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. Subject to the rights of the Declarant and the other provisions of this Declaration, the Association shall also be the primary entity responsible for enforcement of this Declaration, the Standards, the Use Rules and Regulations, and such reasonable rules regulating use of the Community as the Board or the membership may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.

Section 4.02. Common Area. The Association, subject to the rights of the Owners and Declarant set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, landscaping, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the Governing Documents and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under the Governing Documents, the cost of which shall be a Common Expense.

Section 4.03. Personal Property and Real Property for Common Use. Subject to the remaining provisions of this Declaration, the Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibit "A," or Exhibit "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association "AS IS" and thereafter shall be maintained and operated by the Association at its expense for the benefit of its Members, subject to any restrictions, conditions, and provisions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements whatsoever to the property conveyed to the Association, including, without limitation, dredging or removing silt from the Ponds. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Community originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines or otherwise appropriately and profitably develop the Community (as determined by Declarant in its sole discretion).

Section 4.04. Enforcement. The Board or any committee established by the Board or this Declaration (to include the ARC), with the Board's approval, may impose sanctions for violation of the Governing Documents in accordance with applicable procedures set forth in the Bylaws. Such sanctions may include, without limitation:

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

(b) suspending any Owner's right to vote;

(c) suspending any Person's right to use the Common Area, provided, however, that nothing herein shall authorize the Board to limit ingress and egress to or from a Lot;

(d) suspending any services provided by the Association to an Owner or an Owner's Lot; and

(e) levying Specific Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Sections 8.06 and 8.07 of this Declaration.

In addition, the Board may elect to enforce any provision of the Governing Documents by entering the Lot and exercising self-help (including the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of maintenance, construction or other violations of the Governing Documents) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth herein or in the Bylaws.

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

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. IN ANY ACTION TO ENFORCE THE PROVISIONS OF THE GOVERNING DOCUMENTS OR ASSOCIATION RULES, IF THE ASSOCIATION PREVAILS IT SHALL BE ENTITLED TO RECOVER ALL COSTS, INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES AND COURT COSTS, REASONABLY INCURRED IN SUCH ACTION.

Section 4.05. Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

Section 4.06. Governmental Interests. During the Development Period, the Declarant may designate sites within the Community for fire, police, and utility facilities, public parks, streets, and other public, quasi-public, or private facilities. No membership approval shall be required for such designation. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents to such inclusion.

Section 4.07. Indemnification. THE ASSOCIATION SHALL INDEMNIFY EVERY OFFICER, DIRECTOR, AND COMMITTEE MEMBER, INCLUDING, WITHOUT LIMITATION, MEMBERS OF THE ARC, AGAINST ALL DAMAGES AND EXPENSES, INCLUDING ATTORNEYS' FEES, REASONABLY INCURRED IN CONNECTION WITH ANY ACTION, SUIT, OR OTHER PROCEEDING (INCLUDING SETTLEMENT OF ANY SUIT OR PROCEEDING, IF APPROVED BY THE THEN BOARD OF DIRECTORS) TO WHICH HE OR SHE MAY BE A PARTY BY REASON OF BEING OR HAVING BEEN AN OFFICER, DIRECTOR, OR COMMITTEE MEMBER, EXCEPT THAT SUCH OBLIGATION TO INDEMNIFY SHALL BE LIMITED TO THOSE ACTIONS FOR WHICH LIABILITY IS LIMITED UNDER THIS SECTION, THE ARTICLES OF INCORPORATION, OR GEORGIA LAW.

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

Section 4.08. Dedication of Common Areas. The Association may dedicate or grant easements across, over, and under portions of the Common Area to Liberty County, Georgia, the

City of Hinesville, or to any other local, state, or federal governmental or quasi-governmental entity, or to any private or public utility company, or conservation preservation group; provided that any such dedication shall be in accordance with rules and regulations established by the applicable governing authority. Notwithstanding the foregoing, no such dedication or grant shall be made by the Association during the Development Period without the written consent of Declarant.

Section 4.09. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than it otherwise might be. NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SECURITY SYSTEM OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE COMMUNITY, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS AND ALL OCCUPANTS OF ITS LOT THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, AND THE DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS OF LOTS, RESULTING FROM ACTS OF THIRD PARTIES.

Section 4.10. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities, and may make promissory notes and grant security title to and interests in the Common Area and other property of the Association to secure payment under such contracts. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge use and consumption fees, impact fees, and other fees for services and facilities through Specific Assessments, by requiring payment at the time the service or facility is provided, or by other appropriate means. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example only, some services and facilities which may be provided include landscape maintenance, garbage collection, fire protection, wastewater collection, treatment and disposal, etc. The Board, without approval of the Class "A" Members of the Association, but subject to the restrictions, conditions, and provisions of the Governing Documents and any other agreement relevant to the provided services, shall be permitted to modify or cancel existing services or facilities provided, if any, or

to provide additional services and facilities. Nothing contained herein shall be construed as a representation as to the services and facilities, if any, which will be provided by the Association.

Section 4.11. Relationship with Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over, across and under the Common Area, or any portion thereof, to non-profit, tax-exempt organizations for the benefit of the Community. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For purposes of this Section a "tax exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4).

ARTICLE V MAINTENANCE

Section 5.01. Association's Responsibility.

(a) Maintenance Activities. Subject to the other provisions of this Declaration, the Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) the Common Area,
- (ii) recreational amenities, open space, and all landscaping, signage, lighting, irrigation systems and equipment, fences, walls, and other structures and improvements, sidewalks, paths and trails, situated upon the Common Area;
- (iii) landscaping and signage within public rights-of-way within the Community, as deemed necessary or appropriate in the discretion of the Board;
- (iv) the Ponds, wetlands, and all other drainage systems, storm water retention or detention systems for the Community made a part of the Common Area, including any retaining walls, bulkheads or dams (earthen or otherwise) to the extent the same have not been dedicated to, and accepted for maintenance by, the governing authority having jurisdiction over the Community; provided that the Association shall not be responsible for maintaining the grade or slope of any Ponds or otherwise ensuring the safety of such Ponds, or maintaining the water level therein. Notwithstanding the foregoing, the Association shall be responsible for maintaining any and all structures, recreation equipment, fencing and other improvements to the Common Areas (and not exempted above) which may be owned and/or constructed by the Association;
- (v) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental

Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

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

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

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. Without limiting the generality of the foregoing, and notwithstanding any provision herein to the contrary, the Association shall, at its cost and expense, maintain, repair, and replace all signs, entry features, fountains, lighting, drainage facilities, and other improvements installed by Declarant and/or its successors for the benefit of the Community, and located within public rights-of-way or other publicly dedicated lands within the Community, and shall additionally maintain and care for all lawns, shrubs, trees, and other landscaping within said public lands and rights-of-way; provided that the Association shall have no responsibility for (i) the maintenance, repair, or replacement of any paving, curb and gutter, or similar roadway improvements within the Community, or (ii) any drainage facilities, Ponds, or other improvements within the Community, following dedication to and acceptance of the same by the City of Hinesville for maintenance purposes.

(b) Discontinuation of Activities. There are hereby reserved to the Association easements over the Community as necessary to enable the Association to fulfill its responsibilities under this Declaration. The Association shall maintain the facilities and improvements within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing seventy-five (75%) percent of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment to this Declaration or any other means during the Development Period except with the prior written approval of the Declarant.

(c) Costs of Maintenance. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General

Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

(d) Performance by Declarant. In the event the Association fails to properly and timely perform its maintenance responsibilities hereunder and comply with the Community-Wide Standard at any time during the Development Period, the Declarant may, upon not less than five (5) calendar days notice to the Association and opportunity to cure such failure (not to exceed forty-five (45) days), cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred; provided that the Declarant shall be under no obligation to cause such maintenance to be performed.

Section 5.02. Owners' Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas, irrigation systems, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all Governing Documents. Each Owner, at the Owner's sole cost and expense, shall also maintain any landscaping or sidewalk located within the right of way immediately adjacent to the Owner's Lot, provided that this responsibility shall not extend to the substantial repair or replacement of such sidewalks or landscaping. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and levy a Specific Assessment of all costs incurred by the Association against the Lot and the Owner. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association or its agents under this Section shall not constitute trespass.

Section 5.03. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and the Governing Documents. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent it has been negligent in the performance of its maintenance responsibilities hereunder.

ARTICLE VI INSURANCE AND CASUALTY LOSS

Section 6.01. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if

reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available and advisable (as determined by the Board):

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

(ii) Commercial general liability insurance with such limits and terms as the Board may determine reasonable; and

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

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained with such limits and terms as the Board may determine reasonable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment. In the event of an insured loss, the deductible shall also be treated as a Common Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their families, guests, invitees, or tenants, then the Board may levy a Specific Assessment of the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.06.

(b) Policy Requirements. All insurance coverage obtained by the Board shall:

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

(ii) be written in the name of the Association as trustee for the benefited parties, provided that policies on the Common Areas shall be for the benefit of the Association and its Members;

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

(iv) an endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal.

(c) Additional Policy Requirements. In addition to those requirements set forth in subsection (b) hereinabove, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

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

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

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding the Owners' individual policies from consideration under any "other insurance" clause;

(v) a cross liability provision; and

(vi) a provision vesting the Board with the exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

In addition, the Board shall be vested with exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

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

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

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

Section 6.02. Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on the Owner's Lot, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising the Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct the same in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9 of this Declaration. Alternatively, with the consent of the Board (and the Declarant, if during the Development Period), the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Section 6.03. Limitation of Liability. Notwithstanding the duty of the Association to maintain and repair portions of the Area of Common Responsibility and other areas within the Community, neither the Association, its Board of Directors or committees, its successors or assigns, Declarant, nor any officer, member, manager, shareholder, director or committee member, employee, contractor, or agent of any of them (collectively, the "**Association Protected Parties**"), shall be liable to any Member or their family members, guests, invitees, agents, servants, contractors or tenants for any injury, loss of life, or damage sustained in the Area of Common Responsibility or other area maintained by the Association, or for any injury or damage caused by the negligence or misconduct of any Members or their family members, guests, invitees, agents, servants, contractors or tenants, whether such loss occurs on the Area of Common Responsibility or on individual Lots.

EACH OWNER, BY VIRTUE OF THE ACCEPTANCE OF TITLE TO HIS OR HER LOT, AND EACH OTHER PERSON HAVING AN INTEREST IN OR RIGHT TO USE ANY PORTION OF THE COMMUNITY, BY VIRTUE OF ACCEPTING SUCH INTEREST OR RIGHT TO USE, SHALL BE BOUND BY THIS SECTION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS, AND CAUSES OF ACTION AGAINST THE ASSOCIATION PROTECTED PARTIES ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION PROTECTED PARTIES HAS BEEN DISCLAIMED UNDER THIS SECTION. EACH OWNER, ON BEHALF OF SAID OWNER AND THE OWNER'S

FAMILY MEMBERS, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR TENANTS DOES HEREBY FURTHER SPECIFICALLY RELEASE AND DISCHARGE THE ASSOCIATION PROTECTED PARTIES FROM THE FOREGOING MATTERS FOR WHICH THE LIABILITY OF THE ASSOCIATION PROTECTED PARTIES HAS BEEN DISCLAIMED AND COVENANTS NOT TO SUE THE ASSOCIATION PROTECTED PARTIES FOR THE SAME.

ARTICLE VII ANNEXATION AND WITHDRAWAL OF PROPERTY

Section 7.01. Annexation Without Approval of Membership. At any time during the Development Period and for a period of fifteen (15) years thereafter, Declarant may unilaterally subject to the provisions of this Declaration real property described on Exhibit "B" hereto or any other real property identified by Declarant in a Supplemental Declaration filed in the Public Records. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing of such Supplemental Declaration in the Public Records unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any such additional property in any manner whatsoever. The right of Declarant to subject additional property to the provisions of this Declaration during the Development Period is unconditional and may not be disturbed or impaired by the Association, Board, or any other Person.

Section 7.02. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

Section 7.03. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Community from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community (as determined by Declarant in its absolute discretion). Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Board, on behalf of the Association, shall execute a written consent to such withdrawal notwithstanding any other provision herein to the contrary, provided that the failure of the Board to provide such written consent within thirty (30) days of

Declarant's notice to the Board of its intent to withdraw such property shall be deemed conclusive evidence of such consent. In the event the Association, at its cost and expense (and without contribution from Declarant), erects any structures on or makes other substantial improvements to the Common Area to be withdrawn, the Declarant shall pay to the Association the fair market value of such improvements (as calculated by Declarant in good faith) within sixty (60) days of such withdrawal.

Section 7.04. Additional Covenants and Easements. The Declarant may subject any portion of the Community to additional covenants and easements by filing a Supplemental Declaration in the Public Records, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the subject property only, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property (as determined by Declarant in its absolute discretion).

Section 7.05. No Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

ARTICLE VIII ASSESSMENTS AND UTILITY CHARGES

Section 8.01. Creation of and Obligation for Assessments.

(a) Types. There are hereby created, and the Association is authorized to levy, assessments for the Common Expenses of the Association in performing its responsibilities. Such assessments shall commence at the time and in the manner set forth in this Article. There shall be three types of assessments: (a) General Assessments as described in Section 8.03; (b) Special Assessments as described in Section 8.05; and (c) Specific Assessments as described in Section 8.06. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments.

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

such acquisition of title.

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

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

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

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

Section 8.02. Declarant's Obligation for Assessments. During the Development Period, Declarant shall not be liable for payment of assessments, whether General, Special, Specific or otherwise; provided, however, Declarant may annually elect, but is not required, to contribute to the Association either (a) an amount equal to the assessments on all of its unsold Lots, notwithstanding the commencement date set forth in Section 8.08 hereinbelow, or (b) the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year (a "**Subsidy**"). After termination of the Development Period, the Declarant shall pay assessments on its Lots subject to assessment in accordance with Section 8.08 hereof in the same manner as any other Owner.

The Declarant may, but shall not be obligated to, make any Subsidy. Any such Subsidy may be treated in the Declarant's discretion as either: a voluntary contribution; an

advance against future assessments (if any); or a loan by the Declarant to the Association. Any such advances may be evidenced by promissory notes from the Association in favor of the Declarant or the Declarant may cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community.

Any such Subsidy shall be disclosed as a line item in the Common Expense budget and the treatment of such Subsidy shall be made known to the membership. The payment of such Subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such Subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

Section 8.03. Computation of General Assessments. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a capital contribution to establish a reserve fund. General Assessments shall be fixed at a uniform rate for all Lots subject to assessment under Section 8.08. Such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Lots.

The Board shall send a copy of the final budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by at least 67% of the Class "A" Members and by the Class "B" Member, if such exists. There shall be no obligation to call such a meeting unless a petition for a special meeting is presented to the Board within ten (10) days of the delivery of the notice of assessment.

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

Section 8.04. Reserve Budget and Capital Contribution. The Board may prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. If established, the Board shall include as a line item in the Common Expense budget capital contribution in an amount sufficient to permit meeting the projected needs of the Association over the budget period. There shall be no obligation to establish a reserve budget and make such assessments. If reserves are not established or are insufficient for the repair or replacement of any capital asset, Special Assessments may be levied.

Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the

capital reserve account of the Association in an amount equal to annual General Assessment per Lot for that year (or such lesser or greater amount as determined by the Board). This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of any assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in owning and maintaining the capital assets of the Association.

Section 8.05. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any Special Assessment which would exceed the amount of the General Assessment in any fiscal year shall require the affirmative vote or written consent of a majority of the total Class "A" votes in the Association, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Except as otherwise provided in Section 8.08, Special Assessments shall be levied equally on all Lots.

Section 8.06. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

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

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

Section 8.07. Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest at a rate set by the Board (subject to the maximum interest rate limitations of Georgia law), late charges in such amount as the Board may establish (subject to the limitations of Georgia law), costs of collection, and attorneys fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by

suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Georgia law.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

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

Section 8.08. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Board shall establish the Common Expense budget and levy assessments, or (b) the date upon which the Lot is conveyed or transferred from the Declarant to an Owner for residential occupancy, whichever is later. The first annual General Assessment levied on each Lot, whether levied at the partial or full rate, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Section 8.09. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

Section 8.10. Exempt Property. The following property shall be exempt from payment of assessments:

(a) all Common Area and such portions of the Community owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.01;

(b) any property dedicated to and accepted by any governmental authority or public or private utility; and

(c) any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of recreational and open space for public benefit and held by such agency or organization for such recreational and open space purposes.

ARTICLE IX ARCHITECTURAL STANDARDS

Section 9.01. General. No structure shall be placed, erected, or installed upon any Lot, and no improvements (including, but not limited to, staking, clearing, grading, other site work, exterior alteration of existing improvements, painting or modifying fences, and planting or removal of landscaping materials, installing or modifying swimming pools, irrigation system, hot tubs, lawn sculptures, gazebos, dog runs, etc.) shall take place except in compliance with this Article, and with the prior written approval of the reviewing body specified in Section 9.02 hereof. Any Owner may remodel, paint or redecorate the interior of structures on the Owner's Lot which are not visible to the outside without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant, a Builder, or the Association. This Article may not be amended during the Development Period without the Declarant's written consent.

Section 9.02. Architectural Review.

(a) New Construction. During the Development Period, the Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for original construction and modification within the Community. There shall be no surrender of this right prior to that time except in a written instrument assigning such right in recordable form executed by Declarant and filed in the Public Records; it being acknowledged that Declarant may condition such assignment during the Development Period as deemed appropriate by Declarant.

(b) Modifications. Upon the expiration or assignment of the Declarant's authority to control architectural review for all or a portion of the Community, the Board shall create and appoint an Architectural Review Committee ("ARC"). The ARC shall consist of at least three (3), but not more than five (5), persons who shall serve and may be removed in the Board's discretion; provided, however that the Declarant shall be entitled to appoint and remove (and reappoint as necessary) all members of the ARC during the Development Period. Unless otherwise specifically consent to by Declarant by formal amendment hereto filed in the Public Records, the ARC shall have no rights or authority until the Declarant's authority expires or is assigned. At such time, the ARC shall have authority over modifications, additions, or alterations made on or to existing structures on Lots. At any time during the review process (and assuming that the Declarant has assigned to the ARC the requisite

authority), the Declarant shall have the right to veto any action taken by the ARC during the Development Period.

(c) Application Fee. All new construction or modifications shall be reviewed, and the reviewing body may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the reviewing body during its review and monitoring of the construction or modification activities, including the costs of having any application reviewed (and the construction activities monitored) by architects, engineers, inspectors, or other professionals.

(d) Employment of Review Professionals. The Declarant and the Board may employ architects, engineers, inspectors, or other persons as deemed necessary to perform any review specified in this Section, and, upon Board approval, may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

Section 9.03. Standards and Procedures.

(a) Standards. The Declarant may prepare architectural standards or design guidelines ("Standards") which shall apply to all construction activities within the Community; provided that the provisions of the Standards may vary from one portion of the Community to another depending upon land use, unique characteristics, architectural themes, and other factors determined relevant by the Declarant. The Declarant shall have sole and full authority to amend the Standards during the Development Period. Thereafter, the Board or the ARC, with the consent of the Board, shall have the authority to amend the Standards. The Standards are intended to provide guidance to Owners regarding matters of particular concern in considering applications, and all structures and improvements shall be constructed in strict compliance with the Standards, unless the reviewing body has granted a variance in writing.

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

(c) Review Procedure. The reviewing body shall respond in writing to an application within forty-five (45) days at an address specified by such party at the time of submission; provided that the reviewing body, in its sole discretion, may extend such period of review if needed (not to exceed ninety (90) days). The response may (i) approve the application,

(ii) approve a portion of, segments or features of the Plans, and disapprove other portions, (iii) approve all or a portion of the Plans, subject to reasonable conditions, or (iv) disapprove an application which is deemed to be inconsistent or not in conformity with this Declaration and/or the Standards. The reviewing body may, but shall not be obligated to, set forth the reasons for such finding, and it may make suggestions to cure objections to an application. In the event the reviewing body fails to respond in a timely manner, approval shall be deemed to have been given; provided, however, no construction which is inconsistent with the Standards shall be deemed approved unless a written variance has been issued. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

In reviewing each submission, the reviewing body may consider whatever factors it deems relevant, including visual and harmony of external design with surrounding structures and environment, and shall not be limited to consideration of the Standards only. The reviewing body may require relocation of native plants within the construction site, screening and landscaping as a condition of approval of any submission.

(d) Approval Duration. If construction does not commence on a project which has been approved within one hundred twenty (120) days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval. If construction is not completed on a project for which plans have been approved within the period set forth in the Standards or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article. Unless otherwise stated in the Standards or in the approval, all construction shall be completed within twelve (12) months of commencement (as determined by the ARC).

Section 9.04. No Waiver of Future Approvals. Each Owner acknowledges that the members of the reviewing body will change from time to time and that interpretation, application and enforcement of the Standards and this Article may vary accordingly. Approval of proposals, Plans, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 9.05. Variance. The ARC, or the Declarant during the Development Period, may authorize variances in writing from the Standards and related procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 9.06. Limitation of Liability. The requirements and procedures established by this Article are intended to enhance the overall aesthetics of the Community and shall not create any duty to any Person. Neither the Declarant, the ARC, nor the Association shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, for ensuring the appropriateness of soils, drainage and general site work, nor for any other matter involving construction. Neither the Declarant, the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, a reviewing body and their members shall be defended and indemnified by the Association.

Section 9.07. Enforcement. Any structure or improvement placed or made in violation of this Article or the Standards shall be deemed to be nonconforming, unless a variance has been granted. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant or the Board shall have the right to record a notice of violation in the Public Records and to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the Owner and Lot and collected as a Specific Assessment.

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

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Standards may be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this Section.

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

ARTICLE X USE RESTRICTIONS AND RULES

Section 10.01. General. This Article sets out certain use restrictions that must be complied with by all Owners and occupants of any Lot. All Lots and other property constituting the Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices for Declarant and or Builders, an information center and/or sales office for any real estate broker or agent retained by Declarant to assist in the sale of property within the Community, offices of any property manager retained by the Association, business offices of the Declarant or the Association and related parking facilities) consistent with this Declaration and any Supplemental Declaration. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected and that the Use Restrictions and Rules may change from time to time as provided in this Declaration; provided, however that this Article shall not extend or apply to Declarant or any Builder during the Development Period.

Section 10.02. Rules and Regulations. In addition to the Use Restrictions and Rules set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Community; provided that no such action may be taken by the Board during the Development Period without the prior written consent of the Declarant, which consent may be withheld by the Declarant in its sole and absolute discretion. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, cancelled, or modified in a regular or special meeting by Members holding a Majority of the total Class "A" votes in the Association, and during the Development Period, the written consent of the Declarant.

Section 10.03. Occupants and Others Bound. All provisions of this Declaration and of any rules and regulations governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants, tenants, guests and invitees even though such persons are not specially mentioned herein.

Section 10.04. Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or occupant residing in a dwelling on a Lot may conduct such ancillary business activities within that dwelling 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 dwelling; (b) the business activity conforms to all applicable zoning and other governmental requirements; (c) the business activity does not increase traffic in the Community in excess of what would be expected for residential dwellings in the Community without the business activity (other than routine and minimal deliveries by couriers, express mail carriers, parcel delivery services and other such similar residential delivery services); (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; and (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 Board's sole discretion.

No other business, trade, or similar activity shall be conducted upon a Lot without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing or regular 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: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this Section. Moreover, this Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Community or its use of any Lots that it owns or leases within the Community.

Without limiting the generality of the foregoing, a garage sale, moving sale, rummage sale, auction or similar activity shall be conducted upon a Lot without the prior written approval of the Board and compliance with any conditions, rules or regulations adopted by the Board.

Section 10.05. Improvements on Lots.

(a) No structure shall be placed, erected, or installed upon any Lot, and no improvements (including, but not limited to, staking, clearing, other site work, exterior alteration of existing improvements, painting or modifying fences, and planting or removal of landscaping materials) shall take place except in compliance with Article 9 of this Declaration.

(b) Except as otherwise expressly permitted by this Declaration, no structure shall be erected, altered, placed or permitted to remain on any residential Lot other than one detached, single-family dwelling, not to exceed two stories in height, and a private garage for not more than three (3) cars.

(c) Dwellings erected on any Lot, after the date of this Declaration is recorded, shall have not less than 900 heated square feet of floor space. Any structure exceeding one story in height shall have not less than 600 heated square feet of ground floor area.

(d) No tent, shack, garage, barn or other outbuildings shall be erected on any Lot without a variance from the ARC in accordance with Article 9 hereof, nor any trailer or basement be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence. There shall be no structures of temporary nature placed on any Lot. No privies or unsightly outbuildings shall be erected on any Lot.

Outbuildings provided for herein, which are subject to prior written approval of the ARC, shall be consistent and harmonious with the style and construction of the residential buildings. Additionally, no manufactured homes shall be placed on any Lot or otherwise permitted within the Community, except for manufactured homes which may be used by Declarant or its agents during the Development Period in connection with its construction and sales activities. For purposes of this paragraph, "manufactured home" shall mean a dwelling unit fabricated in an off-site facility for installation or assembly at a building site, bearing a label certifying it is constructed in compliance with the Federal Manufactured Home and Standards Act, 42 U.S.C. 5401 et seq.

(e) No structure shall be erected, placed, altered or permitted to remain on any Lot that is sub-standard or that fails to meet any existing and applicable building, electrical or sanitary code. Zoning regulations applicable to the Community shall be observed. In the event of any conflict between any provision of such zoning regulations and the covenants of this Declaration, the more restrictive provision shall apply.

(f) Before any dwelling may be occupied, it must be completely finished on the exterior in accordance with plans approved by the Association, all of the yard which is visible from any street must be planted with grass or have other suitable ground cover, and the driveway surface must be paved of the surface approved by the Association. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during emergency and lines installed by or at the request of the Declarant.

(g) Without limiting the general provisions of this Section 10.05, it is specifically acknowledged that no fences shall be erected, placed, or modified on any Lot without prior written approval from the ARC. To the extent permitted, no fence, wall, hedge, or shrub planting (in the nature of a fence), or other similar structure or vegetative mass shall be allowed to extend in front of the center line of the main body of any residence, said center line to be located at the point midway between the front and rear of the main body of said residence. With respect to permitted fences, only vertical wooden fences shall be allowed and no fences shall be erected with a height from the ground greater than six (6) feet; provided, however, that chain link fences shall be permitted directly around any pool area. Additionally, no fences shall be allowed on a corner lot except that the ARC may, at its sole discretion, allow a limited amount of fencing to enclose pets or for other purposes. NO FENCES SHALL BE PAINTED OR STAINED. ALL FENCES MUST BE ERECTED BY A LICENSED FENCE COMPANY.

Section 10.06. No Subdivision of Lots. No Lot may be subdivided, reconfigured, its boundary lines changed, or otherwise used or transferred apart from the original parcel of purchase, whether or not the same shall create additional parcels of land, except with prior written approval of the Declarant during the Development Period, and the prior written consent of the Board thereafter. In addition, no home shall be subdivided or partitioned to create housing for more than a single family. Notwithstanding the foregoing, Declarant hereby expressly reserves the right to replat, subdivide, reconfigure or otherwise alter any Lot or Lots that it owns; provided that the same conforms to all applicable laws and regulations of any governing authority having jurisdiction over the Declarant or the Property.

Section 10.07. Drainage and Erosion Control.

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

(b) Each Owner shall be responsible for controlling natural and man-made water flow from the Owner's Lot. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Community with excessive water flow from the Owner's Lot. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from their Lots; provided that neither the Declarant nor the Association shall bear any responsibility or liability for remedial actions to any Lot.

(c) The encroachment of structures or other improvements into, over or across catch basins, drainage areas, or other similar easements (as established on any recorded subdivision plat or the Community, by this Declaration, or by regular usage) is strictly prohibited. Furthermore, the use of any such drainage areas and easements by any Owner or occupant shall be made subject to the provisions of this Declaration and the right of the Declarant and the Association to enter upon and maintain such drainage and easement areas. Such maintenance activities may include, but are not limited to, the disturbance of landscaping within any such drainage area or easement, notwithstanding approval of the landscaping pursuant to Article 9 hereof.

(d) No Person shall alter the grading of any Lot without the prior written approval of the ARC pursuant to Article 9 of this Declaration; provided, however, that the Declarant hereby reserves for itself and the Association a perpetual easement over, across and under the Community for the purpose of altering drainage and water flow. The exercise of such an easement shall be accomplished so as not to materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

Section 10.08. Use of Ponds. In addition to other limitations set forth in this Declaration regarding use of the Ponds, the following restrictions shall apply:

(a) No boats of any kind, whether gas-operated, electric, sail, or otherwise, will be permitted on any Pond, except as needed for maintenance activities authorized by the Board.

(b) No swimming or other recreational use of the Ponds shall be permitted at any time, except as may be approved in writing by the Board.

(c) No refuse of any kind shall be placed on or disposed of from any Lot into the Ponds.

(d) No docks, piers, walkways, or other similar structures shall be constructed or installed in, or be permitted to extend into any Pond, except for such docks, piers, and other structures, if any, authorized by the Board for the benefit of the Association.

(e) No water may be pumped or otherwise taken from any lake by any means by an Owner or other Person for the benefit of a Lot(s) without the prior written consent of the Board.

Section 10.09. Sight Distance at Intersections. Any Lot or other property within the Community located near a street intersection, and all driveways, shall be landscaped at a sufficient height and otherwise improved to prevent safe sight across such areas. Any and all landscaping and other improvements made by the Declarant with such areas shall be deemed to comply with this Section.

Section 10.10. Rubbish, Trash and Construction Debris. All garbage cans shall be located so as to be screened or concealed from view of neighboring Lots and the street on which the Lot fronts. Only on the day of garbage pick-up may the containers be left in the open. In no event may garbage containers be left out more than 48 continuous hours. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. No person shall dump or bury rubbish, garbage or any other form of solid waste, except compost, on any Lot or on the Common Area.

Section 10.11. Clotheslines. Clothes may not be dried or otherwise hung outdoors or at any other location that is visible from neighboring Lots or public rights-of-way, and no outdoor clotheslines or other similar structures may be located or constructed within the Community.

Section 10.12. Recreational Equipment. All recreational equipment, to include, but not limited to basketball goals and backboards, must be placed behind the rear building line of the dwelling or otherwise in accordance with rules and regulations adopted by the Board.

Section 10.13. Vehicles. Automobiles, mini-vans, sports utility vehicles, pick-up trucks, motorcycles, and other vehicles in good repair may be parked only in the garage, carport, driveway or gravel or paved parking pad perpendicular to the driveway; provided, however, that all vehicles must be parked at all times within closed garages to the fullest extent possible. In this connection, no garage (or any part thereof) may be used for storage or other purposes so as to prevent the parking of vehicles therein. No vehicles may be parked on grass areas. All campers, boats, motor homes, recreational vehicles (RV's), disabled vehicles (obviously inoperable or without a current license tag), commercial equipment, and commercial vehicles must be parked in a garage, in another enclosed area approved in writing by the Board and not visible from any street. Fencing or landscaping of an approved design must be used to screen any such vehicles in enclosed areas. No motorized vehicles of any kind are permitted on pathways, walkways, sidewalks, or any part of the unpaved Common Area, except for public safety vehicles and vehicles authorized by the Board. Parking within the streets and roadways of the Community is prohibited, except on a temporary basis (as determined by the Board).

Section 10.14. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of a reasonable number of domestic pets including dogs, cats, or other usual and common household pets, as may be determined in the discretion of the Board. No pets shall be kept, bred or maintained for any commercial purpose. No structure for the housing, care or confinement of any animal or pet shall be constructed, placed or altered on any Lot unless plans are approved. Pet owners shall not allow pets to roam unattended. Dogs shall at all times whenever they are outside be on a leash held by a responsible person or confined within a fenced-in yard or otherwise confined in a manner acceptable to the Board. The fenced-in area must remain closed at all times. All Owners and occupants keeping pets within the Community shall comply with all applicable governmental ordinances and regulations. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law. If a pet leaves feces on any portion of the Community other than the pet owner's Lot, the pet owner will be responsible for its removal. If not removed immediately, a fine may be levied by the Board.

Any Owner or Occupant who keeps or maintains any pet on any portion of the Community shall be deemed to have indemnified and agreed to 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, including, but not limited to, personal injury and property damage.

Section 10.15. Pools. Swimming pool designs must be submitted to the ARC for approval before any clearing or grading is done. Construction plans, including landscaping and fencing, must be submitted for approval. All pools within the Community shall be fenced and maintained in accordance with applicable law.

Section 10.16. Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain within the Community without the prior written consent of the Board, except that one (1) professional security sign may be placed on the Lot and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed five (5') square feet in size may be displayed on a Lot being offered for sale or for lease. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association on any portion of the Common Area. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing open houses, births, birthdays or other events for limited periods of time. Notwithstanding the foregoing, it is expressly understood that such restrictions shall not apply to the Declarant or any Builder during the Development Period or to any real estate agent or lending institution identified by Declarant during the Development Period.

Section 10.17. Firearms. The discharge of firearms in the Community is prohibited. Notwithstanding this prohibition, police or other security personnel that may be on the Community may discharge firearms in the line of duty. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

Section 10.18. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot, and no such Owner or occupant shall use his or her Lot in such a manner as to create a Nuisance or any duration. 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 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 stored 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 property in the Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier 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 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 10.19. Unsightly Activities. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the changing of oil or the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken in any part of the subdivision except within garages located on Lots. Notwithstanding this provision, occasional minor repairs and maintenance to a vehicle in the driveway completed on the day commenced shall not be prohibited.

Section 10.20. Antennas and Satellite Dishes. Satellite dishes, antennas or other devices for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation may only be erected, used or maintained within the Community as follows:

(a) no transmission antenna, of any kind, may be erected anywhere within the Community without the prior written approval of the Board and, during the Development Period, the Declarant;

(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 within the Community without the prior written approval of the Board and, during the Development Period, the Declarant; and

(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 rules and the reasonable conditions of the Board or rules of the Association so long as such conditions and rules do not (1) unreasonably delay or prevent

installation, maintenance, or use; (2) unreasonably increase the cost of installation, maintenance, or use; or (3) preclude reception of an acceptable quality signal.

Notwithstanding the foregoing, the Board shall have the right to erect, construct and maintain any dishes, antennas or other devices within the Common Areas as it deems appropriate. Moreover, this Section shall not apply to the Declarant during the Development Period.

Section 10.21. Lot Maintenance. All maintenance of the Lot and all structures, parking areas, landscaping, and other improvements on the Lot shall be the sole responsibility of the Owner, who shall maintain the Lot in a manner consistent with this Declaration and any rules and regulations promulgated in accordance with this Declaration. Such maintenance shall include, but not be limited to, maintaining fencing in good repair, exterior painting as needed, and maintenance of all vegetation and landscaping in good and presentable condition. All yards shall be adequately irrigated and maintained in a neat and orderly condition, which shall include removal of leaves, broken limbs, dead trees and other debris as necessary. All lawns must be regularly cut (general grass height may generally not exceed eight (8") inches) and maintained (no noticeable weed or disease problem). Notwithstanding the foregoing, the Declarant shall not be required to observe the requirements of this Section during the Development Period.

Section 10.22. Tree Removal. No tree having a diameter in excess of six (6") inches shall be cut, harvested or otherwise removed from the Community without the prior written consent of the Board, and all reasonable efforts shall be made by each Owner to preserve and protect any and all trees on the Owner's Lot from disease, damage, rot, insects, and other similar threats. In the event any tree is removed by an Owner, for whatever reason, the Board shall be authorized to require the replacement of said tree, at the Owner's cost, with a tree of suitable size, character, and variety. In the event, the condition of any tree is such that it poses an immediate threat to Persons or property within the Community so as to make a meeting of the Board impractical, the Chairman of the Board (or his or her designee) shall be authorized to approve removal or other remediation without consultation with the Board. For purposes of this Section, the diameter of any tree shall be measured at the main stem four and one-half (4.5') feet above the natural grade at its base. Whenever a branch, limb, defect or abnormal swelling of the trunk occurs at this height, the diameter shall be measured at the nearest point above or below 4.5 feet at which a normal diameter occurs. This Section shall not extend or apply to Declarant or any Builder during the Development Period.

ARTICLE XI EASEMENTS

Declarant hereby reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, the Owners, and their successors-in-title, as well as any Builder (to the extent set forth hereinbelow).

Section 11.01. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

Section 11.02. Easements for Utilities, Etc.

(a) Declarant hereby reserves, creates, establishes, promulgates and declares for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasigovernmental entity and any public or private utility provider perpetual, non-exclusive easements upon, across, over, and under all of the Community (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across and through the Community, as necessary, to exercise the easements described above.

Declarant may grant to the local water supplier, wastewater handler, electric company, and natural gas supplier easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, and other related facilities, as applicable.

(b) There is hereby reserved to the Declarant during the Development Period the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A," Exhibit "B," or any other real property which may be subjected to this Declaration by Declarant as authorized herein.

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

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

Section 11.03. Easements for Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement over the Community for access, ingress and egress to the Ponds and wetlands located within the Area of Common Responsibility and for (a) installing, keeping, maintaining repairing, and replacing pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) constructing, maintaining, and repairing any bulkhead, retaining wall, levee, or other structure retaining water; and (c) removing trash and other debris therefrom. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

Section 11.04. Easements to Serve Additional Property. The Declarant hereby reserves, creates, and declares non-exclusive, perpetual easements for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any additional property now owned or hereafter acquired by Declarant (to include, without limitation, the real property described on Exhibit "B"), whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, construction of roads, for the posting of signs, and for connecting and installing utilities serving such additional property. Declarant agrees that it and its successors or assigns shall be responsible for any material damage caused to the Common Area as a result of the exercise of this easement.

Section 11.05. Right of Entry. The Association and, during the Development Period, the Declarant shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance pursuant to Article 5 hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Such right may be exercised by the Declarant or any member of the Board, the Association's officers, agents, employees, and managers, 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. This right of entry shall include the right of the Association and, during the Development Period, the Declarant to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Declarant or the Board, as the case may be, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

Section 11.06. Landscaping and Signage Easements. The Declarant and the Association shall have perpetual, non-exclusive easements exercisable by their respective employees, agents and contractors over those portions of Lots designated as "no access easement" or "entry easements" on the recorded subdivision plats relating to the Community for the purpose of installation, maintenance, repair and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems and landscaping within the easement area. No fences, structures, driveways, plantings, swings, wood piles, dog runs or any other objects, temporary or permanent, shall be permitted in such areas without the Association's prior written approval, other than those initially installed by Declarant. Nothing herein shall obligate the Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any Landscaping and Signage Easement.

Section 11.07. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, or its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Community, except in cases of willful or wanton misconduct.

ARTICLE XII MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Community. The provisions of this Article shall apply to both this Declaration and to the Association's Bylaws, notwithstanding any other provisions contained herein or therein.

Section 12.01. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any 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 a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within sixty (60) days; or

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

Section 12.02. 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 the Common Area.

Section 12.03. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 12.04. 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, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XIII DECLARANT'S RIGHTS

Section 13.01. Development Period. The Declarant shall be afforded special privileges, rights, immunities, exceptions and other preferential treatment as provided herein throughout the term of this Declaration until the earlier of:

- (a) when the Declarant no longer owns any Lots or other property within the Community, as presently constituted or hereafter expanded (including any property described on Exhibit "A" or Exhibit "B");
- (b) when the Declarant no longer has the unilateral right to subject additional property to this Declaration pursuant to Article 7 hereof; or
- (c) when, in its discretion, the Declarant so determines and expressly and specifically declares in an instrument filed in the Public Records.

Such period shall be referred to in this Declaration as the "**Development Period.**" If the Declarant voluntarily terminates the Development Period prior to the termination of the Class "B" membership, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in this Declaration and the other Governing Documents.

Section 13.02. Assignment by Declarant. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the other Governing Documents. Upon any such transfer or assignment, the Declarant shall, to the extent specifically provided in the transfer document(s), be automatically released from any and all liability arising with respect to such transferred rights and obligations.

No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

Section 13.03. Development and Sales. During the Development Period, the Declarant and any Builder may maintain and carry on without fee or charge upon portions of the Common Area such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Community and/or the construction or sale of Lots, including, but not limited to, sales activities, promotional and other events, and restrict Members and other Persons from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent practicable) any substantial interference with the Members' use and enjoyment of the Common Area. The Declarant and all Builders shall have easements over the Common Area for access, ingress and conducting such activities.

In addition, the Declarant may establish within portions of the Common Area, without fee or other charge, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Community and/or the construction or sale of Lots, including, but not limited to, business offices, signs, model units, tents, sales offices and related parking facilities. During the Development Period, Members and other Persons may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and all Builders shall have easements over the Common Area for access to and use of such facilities.

During the Development Period, the Declarant may permit use of any facilities situated on the Common Area by Persons other than Members without the payment of any use fees or other charges.

Section 13.04. Improvements to Common Areas. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

Section 13.05. No Further Restriction. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent, which may be withheld in Declarant's sole discretion. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Article 7, may conflict with the Governing Documents.

Section 13.06. No Modification. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules, the Standards, or any other rule or regulation made after termination of the Class B Control Period shall be

effective without prior notice to and the written approval of Declarant, during the Development Period. This Article may not be amended without the written consent of the Declarant.

ARTICLE XIV GENERAL PROVISIONS

Section 14.01. Duration. Subject to the limitations of Georgia law, this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 14.02. Amendment. This Declaration may be amended as provided in this Section. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(a) **By Declarant.** During the Development Period, the Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration to (i) bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) enable any title insurance company to issue title insurance coverage; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans; or (iv) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, 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 Lot Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner, except as otherwise expressly provided for in this Declaration, to include without limitation, Article 7.

(b) **By the Owners.** This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant, during the Development Period.

(c) **By the Board.** The Board shall be authorized to amend this Declaration without the consent of the Owners to submit the Association to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 et seq., and to conform this Declaration to any

mandatory provisions thereof. During the Development Period, any such amendment shall require the written consent of the Declarant.

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

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

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

Section 14.03. Severability. Each restriction, covenant, and other provision contained herein is severable and distinct from each other restriction, covenant, and provision contained herein and in its application to all or any portion of the Community and the invalidity or unenforceability of any restriction, covenant or other provision contained herein as to any portion of the Community shall not affect the validity or enforceability of any of the other restrictions, covenants, or provisions contained herein.

Section 14.04. Litigation; Standing of Association. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; or (d) counter-claims brought by the Association in proceedings instituted against it; provided that the Association may in no event commence any suit or other proceeding against Declarant, or its successors, assigns, members, managers, officers, shareholders, directors, contractors, subcontractors, vendors, suppliers, materialmen or agents, for any reason, unless approved by a vote of 75% of the Members (or such lesser or greater percentage as may be required by O.C.G.A. § 8-2-42, as such Code Section exists as of the date of recording of this Declaration). ONLY THE ASSOCIATION SHALL HAVE STANDING AND THE RIGHT TO BRING SUIT OR INTITATE ANY OTHER PROCEEDING AGAINST DECLARANT, OR ITS SUCCESSORS, ASSIGNS, MEMBERS, MANAGERS, OFFICERS, SHAREHOLDERS, DIRECTORS, CONTRACTORS, SUBCONTRACTORS, VENDORS, SUPPLIERS, MATERIALMEN OR AGENTS, ARISING FROM OR RELATED, DIRECTLY OR INDIRECTLY, TO THE COMMON AREAS (OR ANY DEFECTS IN ANY BUILDING, STRUCTURES OR IMPROVEMENTS THEREON) OR THIS DECLARATION (WHICH SUITS, IF ANY, SHALL BE STRICTLY LIMITED BY AND SUBJECT TO THE PROVISIONS OF THIS DECLARATION), AND ALL INDIVIDUAL OWNERS HEREBY

SPECIFICALLY WAIVE AND RELINQUISH ANY RIGHT TO SEEK DAMAGES OR OTHER LEGAL OR EQUITABLE REMEDIES OF ANY KIND FROM DECLARANT, OR DECLARANT'S SUCCESSORS, ASSIGNS, MEMBERS, MANAGERS, OFFICERS, SHAREHOLDERS, DIRECTORS, CONTRACTORS, SUBCONTRACTORS, VENDORS, SUPPLIERS, MATERIALMEN OR AGENTS, UNDER ANY COMMON LAW OR STATUTORY THEORY OF LIABILITY ARISING FROM OR RELATED, DIRECTLY OR INDIRECTLY, TO THE COMMON AREAS (OR ANY DEFECTS IN ANY BUILDING, STRUCTURES OR IMPROVEMENTS THEREON) OR THIS DECLARATION, INCLUDING BUT NOT LIMITED TO LIABILITY GROUNDED IN NEGLIGENCE, PROFESSIONAL NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, FRAUD, BREACH OF FIDUCIARY DUTY, OR STRICT LIABILITY; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT PRECLUDE ANY OWNER FROM BRINGING SUIT AGAINST THE BUILDER OR SELLER OF THE OWNER'S HOME TO THE EXTENT PERMITTED BY LAW AND ANY DOCUMENTS EXECUTED IN CONNECTION WITH SUCH CONSTRUCTION ACTIVITIES AND/OR SALE. ANY AND ALL SUCH SUITS OR PROCEEDINGS BROUGHT BY THE ASSOCIATION SHALL BE SUBJECT TO THE PROVISIONS OF O.C.G.A. § 8-2-42 TO THE EXTENT APPLICABLE (AS SUCH CODE SECTION EXISTS AS OF THE DATE OF RECORDING OF THIS DECLARATION). This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above, and unless such amendment otherwise conforms to the provisions of Section 14.02 hereof.

Section 14.05. Disclaimer; Release for Construction Defects. NO WARRANTY OF WHATEVER KIND, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING UNDER STATE OR FEDERAL LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, HABITABILITY, OR WORKMANSHIP, IS GIVEN TO THE ASSOCIATION OR ANY OWNER OR OTHER PERSON WITH RESPECT TO THE COMMON AREAS OR ANY BUILDING, STRUCTURE OR OTHER IMPROVEMENT OF ANY KIND LOCATED THEREON, AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED BY DECLARANT AND WAIVED BY THE ASSOCIATION AND ALL OWNERS. TO WHATEVER EXTENT THE ASSOCIATION OR ANY OWNER MAY ACQUIRE AN INTEREST IN THE COMMON AREAS OR ANY BUILDING, STRUCTURE OR OTHER IMPROVEMENT LOCATED THEREON, THE SAME SHALL BE, AND ARE HEREBY ACCEPTED "AS IS," WITH ALL FAULTS AND DEFECTS OF WHATEVER KIND. BY THE ASSOCIATION'S AND ANY OWNER'S ACCEPTANCE OF A DEED TRANSFERRING ANY LOT OR OTHER PORTION OF THE COMMUNITY FROM DECLARANT TO SAID ASSOCIATION OR OWNER, AS THE CASE MAY BE, THE ASSOCIATION AND ALL SUCH OWNERS SPECIFICALLY ACKNOWLEDGE DECLARANT'S DISCLAIMER OF WARRANTIES SET FORTH HEREINABOVE. FURTHERMORE, AND IN ADDITION TO ANY OTHER LIMITATIONS PROVIDED IN THIS DECLARATION, THE ASSOCIATION AND ALL OWNERS (FOR THEMSELVES AND ON BEHALF OF THEIR SUCCESSORS, ASSIGNS, GUESTS, TENANTS, AND INVITEES), AND EACH OF THEM, SPECIFICALLY RELEASE, ACQUIT, AND FOREVER

DISCHARGE DECLARANT, AND THEIR SUCCESSORS, ASSIGNS, MEMBERS, MANAGERS, OFFICERS, SHAREHOLDERS, DIRECTORS, CONTRACTORS, SUBCONTRACTORS, VENDORS, SUPPLIERS, MATERIALMEN AND AGENTS (COLLECTIVELY, THE "**RELEASED PARTIES**"), OR ANY OF THEM, FROM ANY AND ALL CLAIMS, CLAIMS FOR RELIEF, ACTIONS, CAUSES OF ACTIONS (WHETHER EX CONTRACTU OR EX DELICTO), SUITS, DEBTS, LIENS, CONTRACTS, OBLIGATIONS, AGREEMENTS, PROMISES, REPRESENTATIONS, LIABILITIES, DEMANDS, LOSSES, DAMAGES, COSTS, PENALTIES, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, LITIGATION EXPENSES AND REASONABLE ATTORNEYS' FEES), OF EVERY KIND OR NATURE, WHETHER KNOWN OR UNKNOWN, JOINT OR SEVERAL, FIXED OR CONTINGENT, RELATING TO OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, ANY DEFECT IN THE COMMON AREAS OR ANY BUILDING, STRUCTURE OR OTHER IMPROVEMENT LOCATED THEREON UPON WHICH THE ASSOCIATION OR ANY OWNER (OR THEIR SUCCESSORS, GUESTS, TENANTS, OR INVITEES) MAY HAVE HAD, MAY NOW HAVE, MAY CLAIM TO HAVE, OR MAY HEREAFTER HAVE OR CLAIM TO HAVE AGAINST THE RELEASED PARTIES. ADDITIONALLY, THE ASSOCIATION AND ALL OWNERS (FOR THEMSELVES AND ON BEHALF OF THEIR SUCESSORS, ASSIGNS, GUESTS, TENANTS, AND INVITEES), AND EACH OF THEM, DO HEREBY FURTHER COVENANT NOT TO SUE OR OTHERWISE SEEK RECOURSE AGAINST THE RELEASED PARTIES, OR ANY OF THEM, ON ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION, SUIT, LIABILITY, INDEBTEDNESS, DUTY, OBLIGATION OR RESPONSIBILITY HEREINABOVE RELEASED. FOR PURPOSES OF THIS SECTION, THE TERM "DEFECT" SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY MATTER CONCERNING THE DESIGN, CONSTRUCTION, ALTERATION, FITNESS, CONDITION, OPERATION, OR REPAIR OF THE COMMON AREAS AND ANY BUILDING, STRUCTURE OR OTHER IMPROVEMENT LOCATED THEREON. THIS SECTION SHALL BAR AND SERVE AS A COMPLETE DEFENSE TO ANY ACTION OR OTHER PROCEEDING BROUGHT OR PROSECUTED AGAINST THE RELEASED PARTIES, OR ANY ONE OF THEM, CONTRARY TO THIS SECTION.

Section 14.06. Limitation of Damages. NOTWITHSTANDING ANY OTHER PROVISION HEREIN TO THE CONTRARY, THE ASSOCIATION AND ALL OWNERS (FOR THEMSELVES AND ON BEHALF OF THEIR SUCESSORS, ASSIGNS, GUESTS, TENANTS, AND INVITEES), AND EACH OF THEM, HEREBY SPECIFICALLY WAIVE AND FOREVER RELINQUISH ANY RIGHTS SUCH PERSONS MAY HAVE TO ALLEGE, PURSUE OR COLLECT CONSEQUENTIAL OR PUNITIVE DAMAGES IN ANY AMOUNT IN ANY ACTION OR PROCEEDING OF WHATEVER KIND OR NATURE AGAINST DECLARANT, OR DECLARANT'S SUCCESSORS, ASSIGNS, MEMBERS, MANAGERS, OFFICERS, SHAREHOLDERS, DIRECTORS, CONTRACTORS, SUBCONTRACTORS, VENDORS, SUPPLIERS, MATERIALMEN OR AGENTS ARISING OUT OF THIS AGREEMENT, THE COMMON AREAS, ANY CONSTRUCTION DEFECT, OR ANY WORK PROSECUTED OR CONTEMPLATED IN CONNECTION THEREWITH. NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, THIS SECTION SHALL BAR AND SERVE AS A COMPLETE DEFENSE TO ANY ACTION OR OTHER

PROCEEDING BROUGHT OR PROSECUTED AGAINST DECLARANT OR DECLARANT'S SUCCESSORS, ASSIGNS, MEMBERS, MANAGERS, OFFICERS, SHAREHOLDERS, DIRECTORS, CONTRACTORS, SUBCONTRACTORS, VENDORS, SUPPLIERS, MATERIALMEN OR AGENTS CONTRARY TO THIS SECTION.

Section 14.07. Cumulative Effect. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

Section 14.08. Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, any applicable Supplemental Declaration, the Bylaws, the Standards, the Use Restrictions and Rules promulgated pursuant to Article 10, and any and all other Governing Documents. Subject to the terms of this Declaration, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Lot Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.04.

Section 14.09. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations accruing through the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Section 14.10. Exhibits. All exhibits attached to this Declaration are incorporated by this reference and, unless otherwise provided herein, amendment of such exhibits shall be governed by the provisions of Section 14.02.

Section 14.11. No Waiver. No failure of Declarant or the Association to exercise any power herein given or to insist upon strict compliance with any obligation specified herein and no custom or practice at variance with the terms hereof shall constitute a waiver of Declarant's or the Association's right to demand exact compliance with the terms and provisions hereof, unless expressly waived in writing by Declarant or the Association, as the case may be.

Section 14.12. No Merger. Notwithstanding the fact that Declarant is the current owner of the Community, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Community and Owners shall not merge into the fee simple estate of individual Lots conveyed by Declarant or its successor(s), but that the estates of the Declarant and individual Lot Owners shall remain as separate and distinct estates. Any

conveyance of all or a portion of the Community shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

Section 14.13. Governing Law; Venue. THIS DECLARATION SHALL BE CONSTRUED UNDER AND ACCORDING TO THE LAWS OF THE STATE OF GEORGIA (EXCLUDING ITS CONFLICT OF LAW RULES), AND EVERY OWNER AGREES THAT ALL ACTIONS RELATING TO, OR ARISING OUT OF, THIS DECLARATION SHALL BE INSTITUTED AND PROSECUTED IN THE COURTS OF THE COUNTY OF LIBERTY, STATE OF GEORGIA, OR THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA, AND BY EXECUTION OF THIS DECLARATION, SUCH OWNERS IRREVOCABLY AND UNCONDITIONALLY SUBMIT TO THE JURISDICTION (BOTH SUBJECT MATTER AND PERSONAL) OF EACH SUCH COURT AND IRREVOCABLY AND UNCONDITIONALLY WAIVE: (A) ANY OBJECTION THEY MIGHT NOW OR HEREAFTER HAVE TO THE VENUE IN ANY SUCH COURT; AND (B) ANY CLAIM THAT ANY ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. ALL OWNERS FURTHER ACKNOWLEDGE THAT NEITHER DECLARANT, THE ASSOCIATION, THE OWNERS, NOR ANY OTHER PERSON HAS ANY EXPECTATION THAT, AND THERE IS NO BASIS FOR, ANY SUCH ACTION BEING INSTITUTED OR MAINTAINED IN ANY COURT OTHER THAN AS SPECIFIED ABOVE (WHETHER OUTSIDE OR INSIDE THE STATE OF GEORGIA), AND EVERY OWNER COVENANTS AND AGREES THEY SHALL IN NO EVENT INSTITUTE OR PROSECUTE ANY SUCH ACTION IN ANY OTHER COURT EXCEPT AS SPECIFIED HEREINABOVE, AND THAT THIS SECTION SHALL BAR AND SERVE AS A COMPLETE DEFENSE TO ANY ACTION BROUGHT OR PROSECUTED BY ANY OWNER IN ANY OTHER COURT (WHETHER LOCATED OUTSIDE OR INSIDE THE STATE OF GEORGIA).

Section 14.14. Construction. The provisions of this Declaration shall be liberally construed to effectuate their purpose of protecting the value and desirability of the Community, and establishing a flexible and reasonable procedure for the overall development, administration, maintenance and preservation thereof while recognizing the preferential treatment and special rights granted to the Declarant, and shall not be construed against the Declarant or the Association by virtue of the Declarant or the Association being deemed to have drafted any provision hereof.

Section 14.15. Conflicting Provisions. If any provision of this Declaration is found to be inconsistent with or contrary to the Articles or the Bylaws, the Declaration shall be deemed to control and the Articles and Bylaws shall be deemed modified accordingly and, as so modified, to continue in full force and effect.

[Signature of Declarant Appears on Following Page]

[Declaration for The Community at Heritage Pointe – Cont.]

IN WITNESS WHEREOF, Declarant has executed this Declaration by causing its name to be hereunto subscribed and its seal affixed by its duly authorized officer, all being done as of the day and year first above written.

DECLARANT:

DRYDEN ENTERPRISES, INC., a
Georgia corporation



(CORPORATE SEAL)

By: Claude L. Dryden, Jr.
Claude L. Dryden, Jr., President

Signed, sealed and delivered
in the presence of:

B. Denise Howard
Witness

Carla V. Standard
Notary Public
My Commission Expires: _____
(NOTARY SEAL)



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EXHIBIT "A"

Description of Community

THIS EXHIBIT "A" is made a part of that certain Declaration of Covenants, Conditions and Restrictions for The Community at Heritage Pointe to which this Exhibit "A" is attached, and provides for all purposes a description of the real property initially constituting the Community described therein, to wit:

TRACT ONE:

All those certain lots, tracts or parcels of land situate, lying and being in the **1476th G. M. District of Liberty County, Georgia**, and being in the **City of Flemington**, being shown and designated as **Lot Nos. 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, and 116** (inclusive), on that certain plat of survey, dated May 13, 2019, made and prepared by P.C. Simonton & Associates, Inc., and certified by Peter N. Durand, Georgia Registered Land Surveyor, No. 3213, and recorded in **Plat Book 24, pages 333-334**, in the Office of the Clerk of Superior Court of Liberty County, Georgia, which plat is by this specific reference is made a part hereof for descriptive and all other purposes.

TRACT TWO:

All those certain lots, tracts or parcels of land situate, lying and being in the **1476th G. M. District of Liberty County, Georgia**, and being in the **City of Flemington**, being shown and designated as **Lot Nos. 20, 24, 36, 44, 49, 50, 53, 55, 56, 67 and 68** (inclusive), on that certain plat of survey, dated December 9, 2019, made and prepared by P.C. Simonton & Associates, Inc., and certified by Peter N. Durand, Georgia Registered Land Surveyor, No. 3213, and recorded in **Plat Book 24, pages 516-518**, in the Office of the Clerk of Superior Court of Liberty County, Georgia, which plat is by this specific reference is made a part hereof for descriptive and all other purposes.

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EXHIBIT "B"

Additional Property

THIS EXHIBIT "B" is made a part of that certain Declaration of Covenants, Conditions and Restrictions for The Heritage Pointe Community to which this Exhibit "B" is attached, and provides for all purposes a description of certain real property which may, without limitation or obligation, be subjected to the provisions of this Declaration, to wit:

Any and all real property adjacent to the Community and now or hereafter owned by Dryden Enterprises, Inc. or any other successor Declarant under this Declaration

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