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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

# FOR

# PAXTON HILL

Long County, Georgia

Published

By

Dryden Enterprises, Inc., a Georgia Corporation

Dated as of March 22, 2023

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.

STATE OF GEORGIA

COUNTY OF LONG

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PAXTON HILL

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PAXTON HILL (hereinafter referred to as the "Declaration") is made and published as of the 22nd day of March, 2023, by **DRYDEN ENTERPRISES, INC.** a corporation formed and existing under the laws of the State of Georgia, the owner of the hereafter described real property (hereinafter referred to as **"Declarant"**).

**W I T N E S S E T H:**

**WHEREAS**, Declarant is the owner of certain real property lying in Long County, Georgia commonly known as "PAXTON HILL" 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 Paxton Hill 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 Paxton Hill 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 Long 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 assessment 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, AND IN ADDITION TO ANY OTHER INDEMNIFICATION, LIMITATION, OR OTHER PROTECTION IN FAVOR OF DECLARANT OR THE ASSOCIATION, EACH OWNER, BY VIRTUE OF ITS MEMBERSHIP IN THE ASSOCIATION, DOES HEREBY AGREES 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.

**Section 2.07. Community Swimming Pool(s).** Access to and use of the swimming pool(s) made a part of the Common Area (each a **"Pool"** and collectively, the **"Pools"**) is made subject to any rules and regulations promulgated by the Board or its committees in connection therewith. ALL PERSONS, INCLUDING ANY OWNER OR OCCUPANT, ARE NOTIFIED THAT NO LIFEGUARD OR OTHER ATTENDANT WILL BE MADE AVAILABLE BY THE ASSOCIATION WITH RESEPCT TO THE POOLS, AND ALL PERSONS USING ANY POOL SHALL ASSUME ALL RISK OF LOSS, DAMAGE, DEATH, OR INJURY (OF WHATEVER NATURE) THAT MAY BE SUSTAINED BY SUCH PERSONS WHILE USING THE POOL OR IN THE VICINITY OF THE POOL.

## 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, 2073; 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; it being acknowledged that following the construction of Ponds utilized for storm water management within the Community the Association shall be responsible for maintaining the grade or slope of all such Ponds and otherwise ensuring the safety thereof and maintaining the water level therein, unless such obligations are affirmatively assumed by the governmental authority having jurisdiction over the Community**. 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 and Release. EACH MEMBER ACKNOWLEDGES THAT ENTRY UPON OR USE OF ANY PORTION OF THE AREA OF COMMON RESPONSIBILITIES SHALL BE AT THE MEMBER'S AND ALL OTHER PERSONS' SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW,**

AND 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, EXCEPT IN THOSE LIMITED INSTANCES IN WHICH ANY INJURY TO PERSON OR DAMAGE TO PROPERTY IS CAUSED BY THE SOLE AND DIRECT, AFFIRMATIVE NEGLIGENCE OF ANY OF THE ASSOCIATION PROTECTED PARTIES OR BY THEIR GROSS NEGLIGENCE, AND THEN SUCH LIABILITY SHALL EXTEND ONLY TO THE INDIVIDUAL OR ENTITY TO WHICH SUCH NEGLIGENCE IS ATTRIBUTABLE.

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.