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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR

**GRACE BY WINDSONG**

**AN AGE RESTRICTED COMMUNITY IN CONFORMANCE WITH  
THE SAFE HARBOR PROVISIONS OF THE HOUSING FOR OLDER PERSONS  
ACT OF 1995 (PUB. L. 104-76, 109 STAT.787) (“HOPA”), AND THE REGULATIONS  
PROMULGATED BY THE UNITED STATES DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT IN FURTHERANCE OF THE GOALS OF THAT ACT, 24  
CFR PART 100, §§100.304-100.308 AND THE GEORGIA FAIR HOUSING LAW,  
O.C.G.A. §§8-3-200, ET SEQ.**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

GRACE BY WINDSONG

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for GRACE BY WINDSONG (“Declaration”) is made as of the date set forth on the signature page hereof by Wintergreen Development, LLC, a Georgia limited liability company (the Declarant”); and

WHEREAS, Declarant is the owner of the real property described on Exhibit “A,” which is attached and incorporated by reference. This Declaration imposes upon the property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the property. In furtherance of such plan, this Declaration provides for the creation of Grace by Windsong Homeowners Association Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, and the By-Laws (capitalized terms are defined in ARTICLE 1 below); and

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

WHEREAS, it is Declarant’s intention that the housing constructed in the Grace by Windsong subdivision be operated for the benefit of persons aged 55 and older and that residency of lots in Grace by Windsong be restricted so that at least one resident of the household is aged 55 or older; and

WHEREAS, This document does not and is not intended to create a condominium within the meaning of O.C.G.A. §44-3-70, et seq. or a property owners’ development within the meaning of O.C.G.A. §44-3- 220, et seq.

NOW THEREFORE, Declarant hereby subjects the Property described on Exhibit A, which description is incorporated herein by reference as if set forth verbatim for a complete description, to the following covenants, conditions, restrictions and easements:



## ARTICLE 1. DEFINITIONS

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

1.1 “Additional Property”: All of that certain real property which is more particularly described on Exhibit “B”, which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.2 “Area of Common Responsibility”: The Common Area, together with any additional areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract, or agreement.

1.3 “Articles of Incorporation” or “Articles”: The Articles of Incorporation of GRACE BY WINDSONG HOMEOWNERS ASSOCIATION, INC. as filed with the Secretary of State of the State of Georgia, as they may be amended.

1.4 “Association”: GRACE BY WINDSONG HOMEOWNERS ASSOCIATION, INC., a Georgia nonprofit corporation, its successors and assigns.

1.5 “Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Georgia corporate law.

1.6 “Builder”: Any Person 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 Properties for further subdivision, development, and/or resale in the ordinary course of such Person’s business or who enters into a construction contract with an Owner of a Lot for the construction of a residential dwelling. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot 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.

1.7 “By-Laws”: The By-Laws of GRACE BY WINDSONG HOMEOWNERS ASSOCIATION, INC. attached as Exhibit “C,” as they may be amended.

1.8 “Alley”: That area shown on the recorded plat of the subdivision providing access to each Lot from a public street.

1.9 “Common Area”: All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use, benefit, and enjoyment of the Owners.

1.10 “Common Expenses”: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.11 “Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors.

1.12 “Courtyard”: The area bounded by two fences running parallel to the roadway between any two homes located on adjacent Lots. The Courtyard shall be for the use of the Owner which has access to the Courtyard from the Owner’s home, regardless of whether a portion of the Courtyard lies on the adjacent Owner’s Lot subject to these covenants, conditions and easements.

1.13 “Courtyard Fence”: A fence which creates the physical boundary of a Courtyard.

1.14 “Days”: Calendar days; provided however, 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 be automatically extended to the close of business on the next regular business day.

1.15 “Declarant”: Wintergreen Development, LLC, a Georgia limited liability company or any successor, successor-in-title, or assign who holds or takes title to any portion of the property described on Exhibits “A” or “B” 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; provided however, there shall be only one (1) Person entitled to exercise the rights and powers of the “Declarant” hereunder at any time.

1.16 “Declaration”: This Declaration of Covenants, Conditions and Restrictions for Grace by Windsong.

1.17 “Development Period”: The period of time during which the Declarant owns any property which is subject to this Declaration or any Additional Property, or has the right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records evidencing the termination of the Development Period.

1.18 “General Assessment”: Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots.

1.19 “Governing Documents”: The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, the rules of the Association, and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.

1.20 “Lot”: A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon.

In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Lot until such time as a subdivision plat is filed with respect to all or a portion of the parcel. 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 encompassed by such plat shall continue to be treated in accordance with this paragraph.

1.21 “Majority”: Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.22 “Member”: A Person subject to membership in the Association pursuant to Section 3.1.

1.23 “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument recorded to document the security interest of a lender.

1.24 “Mortgagee”: A beneficiary or holder of a Mortgage.

1.25 “Owner”: One (1) or more Persons who hold the record title to any Lot, including the Declarant and any Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.26 “Person”: A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.27 “Properties”: The real property described on Exhibit “A” as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.28 “Public Records”: The Office of the Clerk of the Superior Court of Cherokee County, Georgia or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.29 “GRACE BY WINDSONG”: That certain planned residential community commonly known and referred to as GRACE BY WINDSONG located in Cherokee County, Georgia and subjected to this Declaration.

1.30 “Special Assessment”: Assessments levied in accordance with Section 8.4.

1.31 “Specific Assessment”: Assessments levied in accordance with Section 8.5.

1.32 “Supplemental Declaration”: An instrument filed in the Public Records which subjects Additional Property to this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

## ARTICLE 2. PROPERTY RIGHTS

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

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Association to rent, lease or reserve any portion of the Common Area to any Owner for the temporary exclusive use of such Owner and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;
- (e) The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area pursuant to Section 4.3.
- (f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;
- (g) The right of the Board to permit use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;

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

(i) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

(j) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Section 13.2.

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

2.2 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 other real property which may or may not be subject to this Declaration.

2.3 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Common Area shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) Days after such taking, Members holding at least sixty-seven percent (67%) of the total Class "A" votes of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1 regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

2.4 View Impairment/Improvement. Neither the Declarant nor the Association guarantees or represents that any view from Lots over and across the Common Area will be preserved without impairment. The Association shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole discretion, to add trees and other landscaping or to install improvements or barriers (both natural and artificial) to the Common Area from time to time. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view from the Lot as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Common Area. In addition, neither the Declarant nor the Association shall have any obligation to construct any improvement on the Properties or to install vegetation on the Properties to obstruct unsightly views except as mandated by development requirements or applicable building codes.

### ARTICLE 3. MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(d) and in the By-Laws. In no event shall more than one (1) of the co-Owners of a Lot be an officer of the Association at the same time. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

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

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Each Class "A" Member shall have one (1) equal vote for each Lot in which he or she holds the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Lot.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member shall at all times have the right to exercise one vote for each Lot in the subdivision plus one extra vote. The Class "B"

Member may appoint the members of the Board of Directors until the first to occur of the following:

(i) when one hundred percent (100%) of the total number of Lots located on the land use or development plan for GRACE BY WINDSONG, as such plan may be amended from time to time, which plan includes the property described on Exhibits “A” and “B”, have certificates of occupancy issued thereon and have been conveyed to Persons other than Declarant or Builders;

(ii) December 31, 2025; or

(iii) when the Class “B” Member so determines and voluntarily relinquishes such right.

At such time, the Class “B” membership shall terminate, and the Declarant shall be a Class “A” Member entitled to Class “A” votes for each Lot which it owns. After termination of the Class “B” membership, the Declarant shall have a right to disapprove actions of the Board, and committees as provided in the Declaration as long as it owns any Lots in the Community.

(c) Additional Classes of Membership. The Declarant may create, by Supplemental Declaration, additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article 7 with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(d) Exercise of Voting Rights. If there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot’s vote shall be suspended if more than one (1) Person seeks to exercise it. No vote shall be exercised on behalf of any Lot if any assessment for such Lot is delinquent.

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

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia. The Association shall NOT be governed by the provisions of O.C.G.A. §40-3-220, et seq., the Georgia Property Owners Association Act.

#### 4.2 Personal Property and Real Property for Common Use.

(a) The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the

Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request of Declarant, the Association shall reconvey to Declarant any portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines, provided that the reconveyance has no material adverse effect upon the rights of the Owners.

(b) The Association agrees that the Common Area, including all improvements thereon, shall be conveyed in its "where is, as is" condition and without recourse, and Declarant disclaims and makes no representations, warranties or other agreements express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the conditions, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common Area. No claim shall be made by the Association or any Owner relating to the condition, operation, or completeness of the Common Area or for incidental or consequential damages arising therefrom. Declarant will transfer and assign to the Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Common Area which exist and are assignable.

4.3 Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall constitute a lien upon the Lot of the violator;
- (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (c) suspending an Owner's right to vote;
- (d) suspending any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and



(e) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any occupant, guest or invitee of a Lot violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Lot that the violator is occupying or visiting. If a fine is imposed, the fine may 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.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, 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 any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws to preserve the good order of the community and to maintain the safety of the owners and other persons present in the community or to prevent imminent bodily injury or to prevent substantial damage to Common Area or other personal or real property within GRACE BY WINDSONG. The Association may levy Specific Assessments to cover all costs incurred in exercising self-help and in bringing a Lot into compliance with the terms of the Governing Documents.

The Association may also elect to enforce any provisions of the Governing Documents by suit at law to recover monetary damages or in equity to enjoin any violation or both without the necessity of compliance with the procedures set forth in the By-Laws.

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

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

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

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

4.5 Indemnification. The Association shall indemnify every officer, director and committee member against all damages, liabilities, and expenses, including reasonable attorney's fees, 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 and Georgia law.

The officers, directors 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 and 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 or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and 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 or 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.

4.6 Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to Cherokee County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity, to any public or private utility company.

4.7 Security. Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association or the Declarant may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, 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 measure, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. No representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or attempt to adequately illuminate all of the Common Areas, or that such facilities or systems will be designed with safety measures in mind. 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, Declarant, and any successor Declarant are not insurers or guarantors of safety and security within the Properties and that each Person using the Properties 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.

4.8 Utility Lines. Each Owner, occupant, guest, and invitee acknowledges that neither the Association, the Board nor Declarant shall in any way be considered insurers or guarantors of health or safety within the Properties and neither the Association, the Board, nor Declarant shall be held liable for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Properties. Each Owner, occupant, guest, and invitee assumes all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that neither Declarant nor the Association have made any representations or warranties, nor has any Owner, occupant, guest, or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

4.9 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. 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 for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. 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, some services and facilities which may be provided include landscape maintenance, lawn mowing, garbage collection, pest control service, termite bond, security, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.10 Garbage Collection. In the event the Association elects to contract with a private trash company to pick up all usual and customary household garbage on a regular basis. Garbage and recycling receptacles shall be placed at the curb no earlier than 5:00 p.m.

the day before pick-up and shall be removed within twenty-four (24) hours. Garbage collection shall also be subject to such reasonable rules and regulations as the Board may adopt. All charges for the usual and customary garbage collection shall be funded by the Association as a Common Expense. Nothing contained herein can be relied upon as a representation as to whether garbage collection, if any, will be provided by the Association.

4.11 Termite Bond. The Association may, but shall not be obligated to, elect to obtain and maintain a termite bond for the structures and improvements located on the Properties, including homes located on Lots. In relation thereto, the Association and its duly authorized contractors, representatives, and agents shall have an easement to enter Lots and Courtyards (but not inside homes) for the purpose of performing inspections and tests to determine whether termites exist on any Lots. In the event termites are found on a Lot, the Association and its duly authorized contractors, representatives, and agents shall have an easement to enter the home for the purpose of dispensing chemicals for the extermination of the termites. Owners shall provide either a key to the home for the purpose of such entry or have someone available at such times as are designated by the Board to allow entry into the home for this purpose. All charges for the termite bond and related termite costs shall be funded by the Association as a Common Expense. Nothing contained herein can be relied upon as a representation as to whether a termite bond, if any, will be provided by the Association.

## ARTICLE 5. MAINTENANCE

### 5.1 Association's Responsibility.

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

- (i) all Common Area;
- (ii) all landscaping and other flora, parks, structures, and improvements, including any entry features limited access gates, if any, signage, roadways, parking areas, sidewalks, sprinkler and irrigation systems (including expenses for water and electricity, if any, provided to any irrigation system used for landscaping), greenbelt and open spaces, storm water detention/retention ponds and storm water drainage facilities, situated upon the Common Area;
- (iii) all furnishings, equipment and other personal property of the Association;
- (iv) any landscaping and other flora, parks, sidewalks, buffers, entry features, signage, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;

- (v) such additional portions of any Properties 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) 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 be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

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

(b) The Association shall maintain the facilities and equipment 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 holding sixty-seven percent (67%) of the Class "A" votes in the Association and during the Development Period the Declarant agrees in writing to discontinue such operation.

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

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

(d) 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 the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof.

(e) The Association shall maintain, repair, and replace the landscaping and other flora within the front and rear yards of each Lot, including, but not limited to, mowing and maintaining any grass located on the front and rear yards of each Lot. The “front and rear yard” of each Lot shall be deemed to be that portion of the Lot located between the lot boundary adjacent to the street and the lot boundary located on the rear of the Lot, but exclusive of the dwelling itself and exclusive of any Courtyard. The Association’s obligations pursuant to this subsection shall commence as to each Lot on the later of: (i) the date on which the Association is notified in writing that a certificate of occupancy has been issued for a dwelling on such Lot; or (ii) the date on which such Lot has been conveyed to a Person other than a Builder. The Board may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association and the rights of Owners with respect to adding or modifying landscaping improvements, including, for example, allowing seasonal flowering plants in areas of the Properties at the expense of each Owner.

(f) If the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days’ notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2 Owner’s Responsibility. Each Owner shall maintain such Owner’s Lot and Courtyard and all structures, parking areas, landscaping and other flora, and other improvements on the Lot in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Each Owner shall also maintain the driveway serving such Owner’s Lot. Additionally, each Owner shall be responsible for keeping any storm drain(s) located upon such Owner’s Lot and or Courtyard clear of debris. 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 assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.5(c). 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. Entry under this Section shall not constitute a trespass.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such

Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4 Courtyard Fence - General Rules of Law to Apply. Each Courtyard Fence shall constitute a party wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(a) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Courtyard Fence shall be paid by the Owner who has exclusive use of the Courtyard for which the Courtyard Fence is a part. In the event, the adjacent Owner or its agent is the cause of damage to the Courtyard Fence, the Owner causing such damage shall be responsible for the cost to repair the Courtyard Fence.

(b) Damage and Destruction. If a Courtyard Fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has rights to the Courtyard Fence shall restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## ARTICLE 6. INSURANCE AND CASUALTY LOSSES

### 6.1 Association Insurance.

(a) Required Coverage. 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 coverage as is reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on all public ways located within the Properties and on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

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

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

If any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all affected improvements and other insurable property or the maximum limit of coverage available, whichever is less.

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 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 By-Laws, that the loss resulted from the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.5.



(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Cherokee County, Georgia area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon written request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6(a).

(i) All insurance coverage obtained by the Board shall:

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

b. be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

c. not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

d. contain an inflation guard endorsement;

e. include an agreed amount endorsement, if the policy contains a co-insurance clause; and

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

(ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

a. a waiver of subrogation as to any claims against the Association's Board, officers, employees, and manager, the Owners and their tenants, servants, agents, and guests;

b. a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

c. an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer because 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;

d. an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

e. a cross-liability provision; and

f. 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.

(c) Damage and Destruction. In the event of any insured loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition existing prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and during the Development Period the Declarant decide within sixty (60) Days after the loss either (i) not to repair or reconstruct or (ii) to construct alternative improvements.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association, as appropriate, 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 Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 8.4.

6.2 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 such Owner's Lot, less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures or landscaping on or comprising such Owner's lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure or landscaping consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, 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.

6.3 Limitation of Liability. Notwithstanding the duty of the Association to maintain and repair portions of the Common Area, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) of any of them shall be liable to any Member or any member of a Member's immediate household for any injury or damage sustained in the Area of Common Responsibility, the Common Area 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 lessees, whether such loss occurs in the Common Area or in individual Lots.

Each Owner, by virtue of the acceptance of title to such Owner's Lot, and each other Person having an interest in or right to use any portion of the Properties, 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 arising from or connected with any matter for which the liability of the Association has been disclaimed under this Section.

## ARTICLE 7. ANNEXATION AND WITHDRAWAL OF PROPERTIES

7.1 Annexation by Declarant. Until ten (10) years after the recording of this Declaration in the Public Records, Declarant may from time to time subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the

developer of at least a portion of the real property described in Exhibits “A” or “B” and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of the 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 for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2 Annexation by 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 holding 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 property being annexed, and by the Declarant, if the Declarant’s consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3 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 Properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall uniform scheme of development for the Properties. 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 Association shall execute a written consent to such withdrawal.

7.4 Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, 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 for such purposes as deemed appropriate in the Declarant’s discretion, including but not limited to modifications to reflect the different character and intended use of such property.

7.5 Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

## ARTICLE 8. ASSESSMENTS

8.1 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section 8.6. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys' fees, 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.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

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. Unless the Board otherwise provides, the General Assessment shall be due and payable in equal instalments payable in advance on the first day of each month. If any Owner is delinquent in paying any assessments or other charges levied on such Owner's Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the tenth (10th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment or leasing of such Owner's 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 taken by the Association or Board.

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.

8.2 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 contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.3. For so long as the Class “B” membership exists, Common Expenses shall not include any expenses incurred for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by (i) Members holding a Majority of the total Class “A” votes of the Association and (ii) the Class “B” Member. The operating, maintenance, repair and reserve expense necessary to operate the installed infrastructure improvements on the Common Area shall be included as a Common Expense.

General Assessments shall be levied equally against all Lots subject to assessment and 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 any reserves. In determining the level 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 reasonably anticipated to become subject to assessment during the fiscal year.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or an advance against future sums due from the Declarant, or a loan, in the Declarant’s discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the 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 Members holding at least sixty-seven percent (67%) of the total Class “A” votes in the Association and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

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

8.3 Reserve Budget. The Board may, in its sole discretion, annually prepare a reserve budget which take 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. The Board shall include in the general budget reserve amounts sufficient to meet the projected needs of the Association.

8.4 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. Special Assessments shall be levied and allocated equally among all Lots. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty- seven percent (67%) of the total Class "A" votes and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting to consider any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of such Special Assessment. 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.

8.5 Specific Assessments. The Association shall have the power to levy Specific Assessments against a specific Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) 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 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 the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof which services benefit certain Lot(s) to a greater degree than other Lot(s) (which might include, without limitation, landscape maintenance and lawn mowing services), which assessments may be levied in the discretion of Declarant; and

(c) to cover all costs incurred in bringing the Lot(s) into compliance with the of the Governing Documents, 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.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments. Costs incurred by the Association for landscape maintenance and lawn mowing services shall be a Specific Assessment until one hundred percent (100%) of the Lots have been transferred to Persons other than the Declarant or Builder, upon which time such costs may be a Common Expense at the discretion of the Board.

8.6 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of assessments and other charges, as well as interest at a rate to be 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 reasonable attorney's 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 may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Declarant or 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 allocated to the Lot owned 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. 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 remain the personal obligation of the owner of the Lot prior to the foreclosure, and, unless and until collected from such prior owner, shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.7, including such acquirer, its successors and assigns.

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



8.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the date which the Board first determines a budget and levies assessments pursuant to this Article. Assessments shall commence as to a particular Lot on the first day of the month following the conveyance of the Lot to a Person other than (a) the Declarant or (b) a Builder. Neither the Declarant nor a Builder or developer who purchases a Lot for the purpose of construction of a residence and resale of the Lot and residence shall be responsible for the payment of any type of assessment; provided, however, assessments shall commence on a Lot containing occupied residences that are owned by Declarant or a Builder on the first day of the month following the occupancy of the residence located on the Lot. Assessments shall be due and payable in a manner and on the schedule that the Board of Directors provides. Once assessments have commenced upon any Lot, the obligation to pay assessments with respect to such Lot shall not be suspended or terminated. The first annual General Assessment, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

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

8.9 Exempt Property. The following property shall be exempt from payment of General Assessments and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public 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 open space for public benefit and held by such agency or organization for such recreational and open space purposes.

8.10 Contributions by Declarant. In accordance with Section 8.2, the Declarant may support the Association by funding operating deficits during the Development Period. At the sole election of Declarant, Declarant may recoup from the Association all such payments, which amounts may be paid from the operating account of the Association, or from the working capital contributions collected at the sale of Lots, but not from capital reserves. Regardless of whether the Declarant recoups any other deficit amounts, it is not the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by other Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget of the Association, but which, due to the requirement of an advance payment, create

temporary or seasonal deficits. Accordingly, Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by Owners which, if not sooner paid, shall be paid to Declarant at the time the unpaid assessment is collected. In addition, if not sooner paid, Declarant shall be reimbursed for any refundable deposit upon the Association's receipt of the same.

All deficits shall be collectible by Declarant at any time from the working capital contributions or from excess funds not designated for capital reserves. The Declarant shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. The Board of Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to evidence the repayment obligation of the Association; provided however, the failure to execute such a note shall in no way diminish such obligation.

8.11 Initiation Fee. An initiation fee in an amount to be determined by the Declarant from time to time shall be collected from the purchaser of each Lot, other than the Declarant or a Builder approved by Declarant, which initiation fee shall be paid to the Association. This amount shall be collected and disbursed to the Association at the closing of the purchase and sale of each Lot. Such funds may be used by Association in its sole discretion. In the event of non-payment of such transfer fee, the amount due shall bear interest and shall be collectible as a Specific Assessment as set forth in Section 8.5. The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sale price, such as executed closing statements, contracts of sale, copies of deed, or other such evidence as deemed reasonable in the Association's discretion.

## ARTICLE 9. ARCHITECTURAL STANDARDS

9.1 General. No exterior structure or improvement shall be placed, erected, installed or made upon any Lot or any other portion of the Properties except in compliance with this Article, and with the prior written approval of the ARB under Section 9.2, if any, unless exempted from the application and approval requirements pursuant to Section 9.3.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer, unless otherwise approved by the ARB in its sole discretion.

No fences shall be erected on any Lot (except for Courtyard Fences); provided, however, the Board may allow certain limited fencing as the Board may determine in its sole discretion.

This Article shall not apply to the activities of the Declarant nor to improvements to the Common Area by or on behalf of the Association. This Article may not be amended during the Development Period without the Declarant's written consent.

9.2 Architectural Review. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that all structures and improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of the Properties or the Additional Property. Therefore, the Declarant may, on its behalf, establish an ARB to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. The ARB shall consist of one (1) or more Persons who may, but are not required to, be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB 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 in having any application reviewed by architects, engineers or other professionals. In addition, the ARB may require deposits while construction is pending on any Lot to ensure completion without damage to the Properties.

If established, the ARB shall have jurisdiction over all construction on any portion of the Properties. Until one hundred percent (100%) of the Properties have been developed and conveyed to Owners other than Declarant and initial construction on each Lot has been completed in accordance with the Design Guidelines, the Declarant retains the right to appoint all members of the ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall have the right (i) to establish the ARB if not then in existence, and (ii) to appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

9.3 Guidelines and Procedures - Design Guidelines. The Declarant may prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use.

For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from any golf course, lake, pond, stream or other body of water. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARB and compliance with the Design Guidelines does not guarantee approval of any application.

The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only. There shall be no limitation on the scope of amendments to the Design Guidelines except that no amendment shall require the

modification or removal of any structure previously approved once the approved construction or modification has commenced. The ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The ARB shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Properties.

(a) Procedures. If the ARB is in existence, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, grading, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations.

Each application to the ARB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the ARB, nor the distribution and review of the plans by the ARB shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the ARB shall hold the members of the ARB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

In reviewing and acting upon any request for approval, the ARB shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The ARB shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed improvements are consistent with Design Guidelines.

In the event that the ARB fails to approve or to disapprove any application within forty- five (45) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to Section 9.6.

Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint or redecorate the interior of structures on such Owner's Lot without approval. However, modifications to the interior of screened porches, patios,

windows, 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.

(b) Delinquent Assessments and Other Charges. Notwithstanding the provisions of subsection (b) above, any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until all delinquent assessments and other charges permitted by this Declaration have been paid current by the Owner submitting such plans and specifications for approval.

After the approval of plans and specifications pursuant to this Article, if the Owner shall become delinquent in the payment of assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in Section 9.8 and Section 4.3.

9.4 Construction Period. After commencement of construction, each Owner shall diligently continue construction to complete such construction in a timely manner. The initial construction of all structures must be completed within one (1) year after commencement of construction, unless extended by the ARB in its sole discretion. All other construction shall be completed within the time limits established by the ARB at the time the project is approved by the ARB.

For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB, if in existence; (b) a building permit has been issued for the Lot by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued for a dwelling on the Lot by the appropriate jurisdiction.

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

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

9.7 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Association, the Board nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board, the ARB or any committee, or 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, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.5.

9.8 Easement for Enforcement. The Declarant, any member of the ARB or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect to ascertain whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written notice from the ARB, Owners shall, at their own cost and expense, cure any violation or nonconformance or 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 cure or remove and restore the property as required, any authorized agent of Declarant, the ARB or the Board shall have the right to enter the property, cure or remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant, the ARB by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment pursuant to Section 8.5.

Unless otherwise specified in writing by the ARB, 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. If, after commencement, any Person fails to 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 the By-Laws, 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 pursuant to Section 8.5.

Neither the ARB, or any member of the foregoing nor the Association, the Declarant, or their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article.

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

## ARTICLE 10. USE RESTRICTIONS

10.1 General. This Article, beginning at Section 10.2, sets out certain use restrictions that must be complied with by all Owners, occupants, guests, invitees and licensees of the Properties. These use restrictions may be amended only in the manner provided in Article 14, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Properties. These rules shall be distributed to all Owners prior to the date that they are to become effective, and after distribution, shall be binding upon all Owners, occupants, guests, invitees, and licensees in the Properties until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total association vote and the consent during the Development Period. Notwithstanding the above, during the Development Period no rules and regulations which affect the Declarant or Builder may be adopted, modified, or deleted without the written consent of the Declarant.

The provisions of this Article are intended to be consistent with, and are set forth in order to comply with the Fair Housing Act, 43 U.S.C. § 3601, et seq., and O.C.G.A. § 8-3-205, as such laws may be amended from time to time and such regulations adopted pursuant to such laws (collectively, the “Fair Housing Acts”), regarding discrimination based on familial status except as allowed by the safe harbor provisions of the Housing for Older Persons Act of 1995 (Pub. L. 104-76, 109 Stat.787), and the regulations promulgated by the United States Department of Housing and Urban Development in furtherance of the goals of that act, 24 CFR Part 100, §§100.304-100.308 and the Georgia Fair Housing Law, O.C.G.A. §§8-3-200, et seq. During the Development Period, Declarant shall have the power to amend Section 10.3 for the purpose of making said Section consistent with the Fair Housing Acts, the regulations adopted under the Fair Housing Acts, and any judicial decisions arising under or relating to the Fair Housing Acts, in order to maintain the intent and enforceability of Section 10.3.

### 10.2 Use of Properties.

(a) 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 Properties, including business uses ancillary to a primary residential use, except that the Owner or occupant may conduct such ancillary business activities within the residence so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the residence; (b) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties (except that deliveries may be made by couriers, express mail carriers, parcel delivery services, and other such similar delivery services); (c) the business activity conforms to all zoning requirements for the Properties; (d) the business activity does not increase the insurance

premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (e) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board of Directors; and (f) the business activity does not result in a materially greater use of the Common Area facilities or Association services.

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

(b) Restricted Access to the Properties. All Owners understand and acknowledge that access to the Properties may be restricted to Owners and occupants and their designated guests, invitees, and licensees. Rules and regulations relating to the type of identification needed to gain access to or use facilities in the Properties, how Owners and occupants can designate guests, invitees, and licensees who shall be granted access to the Properties, vehicular registration, and other issues relating to access may be adopted by the Board of Directors.

10.3 Leasing. Lots may be leased for residential purposes only. “Leasing” for the purposes of this Section, is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner; provided, however, “leasing” shall not include exclusive occupancy by the child, parent, or grandparent of an Owner. Occupancy by a roommate of an Owner shall not constitute “leasing.” Leasing which is authorized hereunder shall be governed by the following provisions:

(a) General. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other occupants of the Lot. The Owner must provide the lessee copies of the Declaration, By-Laws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board’s approval or disapproval shall be limited to the form of the proposed lease.



(b) Liability for Assessments, Use of Area of Common Responsibility, and Compliance with Declaration, By-Laws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, By-Laws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any such violation. If the lessee, or another Person occupying the Lot, violates the Declaration, By-Laws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the By-Laws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, By-Laws, or rules and regulations adopted pursuant thereto by the lessee, any occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.

(ii) Use of Area of Common Responsibility. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Area of Common Responsibility, including, but not limited to, the use of any and all recreational facilities and other amenities.

(iii) Liability for Assessments. When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than sixty (60) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay Assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible.

10.4 Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines adopted pursuant to the Declaration which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of Lots and guests and invitees of occupants or Owners. The Owner shall be responsible for insuring that the occupant, and the guests, invitees and licensees of the Owner or the occupant strictly comply with all provisions of the Declaration, By-Laws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner.

10.5 Vehicles. The term "vehicles" as used in this provision shall include without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, trucks, campers, buses, vans, golf carts and automobiles. All vehicles shall be parked within garages, on driveways, or on other paved parking areas in the Properties designated by the Board as parking areas for vehicles. Parking in yards is prohibited. Lot Owners, occupants, guests, invitees and licensees may park on the street on a temporary basis. The doors of garages shall be kept closed at all times, except during times of entry and exit from the garage, or when someone is working or playing in or around the garage.

No vehicle may be left upon any portion of the Properties, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition so that it cannot operate on public streets. After the five (5) day period, the unlicensed or inoperable vehicle shall be considered a nuisance and may be removed from the Properties. No boat, boat trailer, truck with mounted camper, other campers, or towed vehicle, commercial vehicle, or vehicle with commercial writing on its exterior, shall be kept or stored on any portion of the Properties including on a driveway, except in a garage or screened area approved by the Board. In no event shall any recreational vehicle, mobile home or motor home be parked or stored upon any portion of the Properties. Vehicles

parked in violation of this provision shall be considered a nuisance and may be removed from the Properties. No eighteen-wheel trucks or the cabs of these trucks or commercial trucks with a load capacity in excess of one ton shall be parked, kept, or stored within the Properties, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Properties. However, moving vans or service or delivery vehicles may be parked temporarily in the Properties for such period of time as is reasonably necessary to provide each service, but no such vehicle shall remain parked on the Common Area overnight without prior written Board consent.

Motorized vehicles shall not be permitted on sidewalks, pathways or unpaved Common Area except for public safety vehicles and vehicles authorized by the Board.

10.6 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept, or permitted on any portion of the Properties, with the exception of dogs, cats or other generally recognized common household pets in a reasonable number, as determined in the sole discretion of the Board of Directors. Potbellied pigs, chickens, fowls and American Pit Bull Terriers shall not be permitted in the Properties. Pets shall not be allowed to roam free within the Properties. Those pets which are permitted to roam free, or in the sole discretion of the Board endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or occupants or to the owner of any property located adjacent to the Properties, may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Except as provided above, dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Notwithstanding the foregoing, a dog may be contained within a Courtyard without a leash. At no time shall any pet be tied or tethered to any object. Feces left upon the Common Area by dogs must be removed by the owner of the dog or the person responsible for the dog. All Owners and occupants keeping pets within the Properties shall comply with all applicable governmental ordinances and regulations. Without prejudice to the Board's right to remove any such household pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Properties. Animal control authorities shall be permitted to enter the Properties to patrol and remove pets determined to be in violation of the Declaration. Pets shall be registered, licensed, and inoculated as required by law.

10.7 Signs. Except as may be provided for herein or as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development and sale of Lots, no signs, advertising posters, flyers, political placards or billboards of any kind shall be erected or placed by an Owner, occupant or other Person, or permitted to remain on the Properties without the prior written consent of the Board or its designee, except that one (1) professional security sign not to exceed twelve inches (12") by twelve inches (12") in size may be displayed from within a residence on a Lot, and one (1) professionally lettered "For Sale" sign not to exceed eighteen inches (18") by twenty-four inches (24") in size may be displayed in the front yard of a Lot; provided, further that if, at the time of any desired use of such "For Sale" sign, the Association is making "For Sale" signs available for the use of Owners, the signs made available by the Association must be used. No other signs are permitted including, but not limited to, "For Lease," "For Rent," and/or "Lease/Purchase" signs. The Board shall have the right to erect reasonable and

appropriate signs on behalf of the Association. The Board shall also have the authority to adopt regulations permitting temporary signs on Lots announcing birthdays or other events for limited periods of time. No advertising, directional, or vendor signs shall be permitted within the Properties except as authorized by the ARB.

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

(i) No transmission antenna of any kind may be erected anywhere on the Properties without written approval of the Board of Directors or the ARB, as applicable.

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

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

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

10.9 Fireworks. The use or display of fireworks on any portion of the Properties is prohibited except with prior approval of the Association; provided, however, that the Association may provide, either directly or through contract with a third party, a fireworks display within the Properties, to commemorate the Fourth of July. The term “fireworks” shall include those items as listed in O.C.G.A. § 25-10-1, as amended.

10.10 Clotheslines, Garbage Cans, Woodpiles, Recreational and Other Equipment. All clotheslines, garbage cans, woodpiles, and related equipment and other similar items shall be located or screened so as to be concealed from view from any street or road. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no basketball hoops, basketball goals or swimming pools or playground equipment installed on any portion of the Properties without the prior written approval of the Board, with the exception that the Board may, in its sole discretion, permit the installation of such recreational equipment on the Common Area.

10.11 Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited, unless the Owner obtains prior approval from the Board.

10.12 Air Conditioning Units. No window air conditioning units may be installed on any Lot. Condensing units for air conditioners shall only be located in the rear or in the Courtyard.

10.13 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on any Lot within the Properties. Exterior sculptures, benches, fountains, flags, and similar items may not be placed in the front yard of a Lot or on the front exterior of a dwelling without the prior written approval of the ARB, as applicable.

10.14 Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on and in his or her Lot. No Lot within the Properties 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 kept that will discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier, speaker or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed, or maintained upon the exterior of any Lot 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.

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

10.16 Abandoned Personal Property. Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Area, Area of Common Responsibility, or on the rights-of-way located within the Properties. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Area, Area of Common Responsibility, or on the rights-of-way located within the Properties in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Section, neither the

Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

10.17 Tree Removal. No trees, whether located on a Lot or the Area of Common Responsibility, having a diameter of five (5) inches or more (measured from a point two (2) feet above ground level) and a height of more than eight (8) feet above the ground shall be removed without the prior written consent of the ARB, as applicable, except for (a) diseased or dead trees or (b) trees needing to be removed to promote the growth of other trees or for safety reasons. Notwithstanding anything to the contrary stated herein, in the event a diseased or dead tree located on the Common Area that was originally planted by Declarant is removed by the Association, the Association shall replace such removed tree with one of the same species and similar size.

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

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

10.20 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are approved in writing by the ARB, as applicable.

10.21 Subdivision of Lots. No Lot shall be subdivided or its boundary lines changed; provide, however, Declarant expressly reserves the right to combine and/or replat any Lot boundaries owned by Declarant. Any such division, boundary line change, or replatting by the Declarant shall not be in violation of the applicable subdivision and/or zoning regulations.

10.22 Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, storage structure, garage, barn, or other outbuilding shall be erected by any Owner or occupant on any portion of the Properties, other than by Declarant, so long as the Declarant has an option unilaterally to subject Additional Property to this Declaration as provided in Article 7, at any time, either temporarily or permanently, without the written approval of the Board.

10.23 Swimming Pools. No above-ground swimming pool shall be erected, constructed, or installed on any Lot. No in-ground swimming pool or spa shall be erected, constructed or installed on any Lot unless its design, location and placement are approved by the ARB.

10.24 Standard Mailboxes. All Owners of a Lot shall have access to a standard mailbox in a kiosk located in the Common Area conforming to postal regulations and mailbox guidelines promulgated by the United States Postal Service. No individual mailbox may be located on a Lot in violation of this restriction.

10.25 Window Treatments. All window treatments visible from the exterior of the front of such dwelling shall be white, off-white or another color approved in writing by the ARB. In no event should bed sheets, paper or foil be used as window treatments.

10.26 Garages. It is prohibited for an Owner or occupant of a dwelling that includes a garage to convert such garage to any other use. No Owner or occupant of a dwelling that includes a garage shall park his or her car or other motor vehicle on any portion of the Properties, other than in the garage, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage. Garage doors shall remain closed except for necessary use, ingress, and egress, or when someone is working in or around the garage.

10.27 Lighting and Decorations. Except as may be permitted by the ARB, exterior lighting and decorations visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) streetlights in conformity with an established street lighting program for the Properties; or (c) seasonal decorative lights between Thanksgiving Day and January 15th of the following year.

10.28 Use of Common Area Including Amenities. There shall be no obstruction of the Common Area, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Area without the prior written consent of the Board, except as specifically provided herein. There shall be no gardening or landscaping on the Common Area by Owners or occupants without the prior written consent of the Board. This Section shall not apply to the Declarant during the Development Period. The Association shall have the right to host, stage or otherwise allow events on the Common Area. The Association shall also have the right but not the obligation to locate trees, benches and/or other outdoor furniture on the Common Area to commemorate or honor group(s) or individual(s) and to place a plaque on such furniture or trees so commemorating or honoring such group(s) or individual(s).

10.29 Erosion Control and Contamination. No activity which may create erosion or siltation problems in the Properties shall be undertaken on any Lot without the prior written approval of the ARB or its designee, as applicable, of plans and specifications for the prevention and control of such erosion or siltation. Such plans and specifications shall be designed by a professional engineer licensed in the State of Georgia and all costs and expenses related thereto shall be borne exclusively by the Owner of such Lot. The ARB or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, clean-up activities and requiring landscaping as provided for herein. No activity which results in contamination of or any damage to any stream, water course or any other Lot shall be conducted on any Lot, and each Owner shall be liable for all resulting damages from such activity and for restoration of a property damaged from contamination resulting from or attributable to such activity. In addition, prior to commencing any improvements on a Lot, the Owner of such Lot and any builders, subcontractors, or other agents of such Owner, shall fulfill their obligations to comply with the requirements of the State of Georgia Department of Natural Resources, Environmental Protection Division or any other governmental agency having jurisdiction thereof.

10.30 Flagpoles. No flagpoles may be constructed on any of the Properties except that one pole for the display of flags may be attached to a residential dwelling constructed on a Lot. Such flag pole may not be more than five feet in length and if attached to a dwelling so that it is visible from a public street or common area, placement of the flag pole on the dwelling must be approved by the ARB.

10.31 Sculptures, fountains and birdbaths, yard art or similar exterior décor. Sculptures, fountains and birdbaths, yard art or similar exterior décor installed on a Lot must be placed so that it is completely within the fenced area of a Courtyard and is not visible from a public street or Common Area.

10.32 Age Restricted Community.

(a) **Compliance with fair housing laws:** Grace by Windsong is intended and will be operated to provide housing primarily for persons 55 years of age and older. The provisions of this section are to establish the policies and procedures necessary for Grace by Windsong to qualify for the exemptions set forth in the Laws. It is Declarant's stated intention to comply with the Laws at all times. To the extent that any of the provisions of this Amendment conflict with the Laws, then the Laws shall control and this Amendment shall be interpreted to conform to the Laws.

(b) **Meanings conform to the Laws:** Terms used in this Declaration shall be given the same meaning as defined and used in the Laws as appropriate.



(c) **Age Restricted Community:** At least Eighty Percent (80%) of all Lots shall be occupied by at least one person who is 55 years of age or older. For purposes of this Amendment, the term Lot or Lots or Residence or Residences shall have the same meaning as *occupied units* as that term is defined in 24 C.F.R. §100.305(b). No one under the age of nineteen years (19) may reside in any Residence for longer than ninety (90) days in any calendar year, and then only if a person aged 55 years or older is occupying a Residence at the same time.

For purposes of this Amendment, *occupied by at least one person 55 years of age or older* means that:

- i. At least one occupant of the dwelling unit is 55 years of age or older; or
- ii. If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older

Where application of the 80% rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

(d) **Right to Terminate Occupancy of Permitted Non-Qualifying Residents:** The Board, after providing six (6) months prior written notice, shall have the right to terminate the occupancy of any Permitted Non-Qualifying Resident.

(e) **Continued Status of Exempt Care Residents:** An Exempt Care Resident shall be entitled to continue occupancy, residency, or use of a Residence in the absence of the Qualifying Resident to whom care was being provided only if both of the following are applicable: (i) such Qualifying Resident became absent due to the hospitalization or other necessary medical treatment and expects to return to his or her Residence within ninety (90) days from the date the absence began; and (ii) the absent Qualifying Resident, or such Qualifying Resident's authorized representative, submits a written request to the Board stating that the Qualifying Resident desires that the Exempt Care Resident be allowed to continue occupancy in order to be present when the Qualifying Resident returns to his or her residence. Upon such written request, the Board shall have the discretion to allow an Exempt Care Resident to remain for up to an additional ninety (90) days.

For purposes of this Declaration, an "Exempt Care Resident" is a person providing care to a disabled Qualifying Resident or member of the Qualifying Resident's household as necessary to afford such disabled person an equal opportunity to use and enjoy a Residence and the Common Area pursuant to 24 C.F.R. 100.204.

(f) **Hardship Exceptions:** In addition to the foregoing exceptions, the Board may, in its sole and absolute discretion, grant a variance to the Resident from the occupancy restrictions of this article. However, no exception to the residency restrictions may be granted or continued if such exception results in less than eighty percent (80%) of the Occupied Residences being occupied by at least one Qualifying Resident. However, the Board shall be under no obligation to make any exception under any circumstances. A request for a hardship exception shall set forth the names and ages of all proposed occupants of the Residence, the reason the hardship exception is being requested and the length of time for which the hardship exception is requested. Any Owner or Resident making such a request shall also provide the Board with such other information as the Board may request.

(g) **Additional Policies and Procedures:** The Board is authorized to adopt such other policies and procedures which may be necessary from time to time so that the Properties can meet all of the requirements of the provisions of HOPA. A copy of such additional policies and procedures shall be (i) provided by every Owner to any prospective buyer or lessee to read and acknowledge, and (ii) included in any purchase or lease agreements.

(h) **Notice of Transfer:** In the event of any change in the number or identity of Persons occupying a Residence due to a transfer, sale, gift, lease, sublease, assignment, death, birth, marriage, separation, divorce or otherwise, the Owner of any Residence shall immediately notify the Board or its designee in writing and provide the Board or its designee with the names and ages of all occupants of the Residence and such other information as the Board or its designee may reasonably request.

(i) **Compliance with the Eighty Percent (80%) Rule:** At least eighty percent (80%) of the Occupied Residences shall be occupied at all times by one Qualifying Resident unless fewer than twenty five percent (25%) of all completed residences are occupied. Each Owner or Resident shall, within ten (10) days after the Board's request, furnish to the Association a statement signed by the Owner certifying that at least one (1) occupant of a Residence is a Qualifying Resident. In addition, if requested to do so by the Board, an Owner or Resident shall promptly furnish to the Association such documentary evidence as may be requested by the Association to verify the accuracy of the statement set forth in any certification submitted to the Association by the Owner or Resident. Such documentation may include, among other documentation, a copy of the Qualifying Resident's driver's license, passport, birth certificate, immigration card, or military identification card.

(j) **Enforcement:** The Association shall enforce the terms and conditions of this article through all of the powers and remedies available to it pursuant to this Declaration, including, but not limited to the right to levy fines and liens.

(k) **Disclosure of Occupancy Verification Information:** Copies of supporting information gathered by the Association in support of the occupancy verification should be segregated in a file separate from the general or resident files and access to such information should be denied to general employees, other residents or third parties unless necessary to such employees or representatives in the execution of their duties to enforce this article. Each Owner and Resident is hereby notified that the information provided to the Association pursuant to this Section may be provided to applicable governmental agencies to verify compliance with the Laws.

## ARTICLE 11. EASEMENTS

Declarant 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.

### 11.1 Easements of Encroachment.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots, and between each Lot and any adjacent Common Area, 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 (3) 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.

(b) Notwithstanding the provisions contained in the above subsection, the Declarant or any Builder may construct the roof, including the eaves, of any structure located on or within two (2) feet of a Lot boundary such that a portion of the roof, including the eaves, of such structure encroaches by no more than three (3) feet over the boundary line of the adjacent Lot or Common Area.

(c) The Declarant or any Builder may also construct, install, or erect such other structures, including but not limited to a Courtyard and Courtyard Fence which may encroach the boundary line of the adjacent Lot or Common Area. Once established, the easement rights set forth herein, including but not limited to the exclusive use of the Courtyard, shall be appurtenant to the Lot served by the encroaching structure and shall exist for the benefit of the Owner of such Lot, its successors and assigns.

### 11.2 Easements for Utilities, etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself and during the Development Period, for

the Association and the designees of each (which may include, without limitation, any governmental or quasi- governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar 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, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity systems, lines and meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, natural gas supplier, internet service provider, cable television/satellite service provider or any utility sub-metering company, the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and for its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and 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 Exhibits "A" or "B."

(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. Nothing contained herein shall obligate the Declarant, the Association or the Board to pursue legal recourse against any Person damaging a Lot or any portion thereof as a result of the exercise of this 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 Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

**11.3 Easement for Slope Control. Drainage and Waterway Maintenance.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Lot for the purposes of:

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

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

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

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

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

No Owner may alter any drainage control device installed by Declarant or change the slope of any Lot so as to alter the flow or runoff from the Lot or the Properties.

11.4 Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, successors-in-title, 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 the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.5 Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

## 11.6 Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including each Lot, to (a) perform its maintenance responsibilities under Article 5, and make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only after providing the Owner or occupant of the Lot not less than forty-eight (48) hours advance notice and shall occur during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass.

(b) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for each Owner (i) to enter all portions of the Properties, including each Lot, to perform its maintenance responsibilities under Article 5, and (ii) to create a reasonable amount of noise commonly associated with the performance of its maintenance responsibilities under Article 5 during reasonable business hours. Except in emergencies, entry onto a Lot shall be only after providing the Owner or occupant of the Lot not less than forty-eight (48) hours advance notice and shall occur during reasonable business hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Owner or occupant responsible for the damage at his or her expense to that condition which existed prior to the damage. Each Owner and/or occupant shall cooperate with each and every other Owner and/or occupant for purposes of this easement. Entry under this Section shall not constitute a trespass.

(c) The following example is provided for illustrative purposes only and is not intended to provide Owners with any rights other than those set forth in this Section 11.6. Owner Doe and Owner Jones are neighbors. The side of Owner Doe's Lot serves as the boundary to one side of Owner Jones' side yard and Courtyard. Owner Doe needs to replace siding on this wall and, in order to do so, needs access to Owner Jones' side yard and/or Courtyard to remove the damaged siding and install the new siding. Under this Section 11.6, Owner Doe must provide Owner Jones at least forty-eight (48) hours notice of his intent to enter Owner Jones' side yard to perform the maintenance on his Lot. Owner Jones shall permit Owner Doe to enter onto his Lot for the purposes set forth in the notice unless Owner Jones has a legitimate reason for denying entry onto his Lot (i.e. a scheduled event such as a social gathering). If, in the course of making the repairs to his Lot, Owner Doe damages a portion of Owner Jones' garden, Owner Doe shall be responsible for the cost of the repair and/or replacement of those items damaged to the condition they existed immediately prior to the event causing the damage.

(d) The Association also may enter a Lot to abate or remove any structure, thing or condition which violates the Governing Documents using such measures as may be reasonably necessary. All costs incurred plus a ten percent (10%) administrative fee, including reasonable attorneys' fees, may be assessed against the violator as a Specific Assessment.

11.7 Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Lot, and any improvement which contributes to the lateral support of another portion of the Common Area or of another Lot for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

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

11.9 Rights to Stormwater Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent. To the extent that Declarant has installed stormwater runoff control devices on a Lot, no Owner may alter or remove such installed devices. In the event an Owner removes or damages a stormwater runoff control device installed by Declarant, that Owner shall be responsible to pay to repair or re-install such device. In the event that such Owner fails and or refuses to pay for said repair or re-installation, Declarant or its assignee may construct the repair and place a lien on the Lot of such Owner in accordance with Article 8 hereof.

11.10 Easement for Common Use. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for itself, the Association and each Owner the right to use a portion of any Lot which lies between a public right of way and any Private Road, such area being deemed to be Common Area for the benefit of the Owners and to be maintained by the Association. The Association may establish certain structures in such area including, but not limited to gazebos and benches.

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

11.12 Courtyard Easement. Each Owner, its invitees and tenants shall have a perpetual exclusive easement for access and use of the yard area located on the adjacent Lot bounded by two (2) fences running parallel to the roadway between the Owner of a Lot's home and the adjacent home (hereinafter "Courtyard"). Such area is the Courtyard reserved for the exclusive use of the Owner and occupants of the Lot with access to the Courtyard. No Owner may install anything on a dwelling constructed on any Lot other than that owned by said Owner.

Each Owner of a Lot which contains an enclosed portion of a Lot as shown on the recorded plat acknowledges that the exterior wall enclosing the Courtyard which is farthest from the Dwelling on Owner's Lot is the exterior wall of the Dwelling constructed on an adjacent Lot (hereinafter "Neighbor's Wall"). Each Owner agrees not to (i) make any alterations, additions, improvements or attachments to the Neighbor's Wall; (ii) plant any tree, shrub or other vegetation within the Courtyard within five (5) feet of the Neighbor's Wall or whose roots could negatively impact the dwelling on the adjacent Lot or cause an upheaval of the slab serving the dwelling on the adjacent Lot; (iii) plant any tree, shrub or other vegetation within the Courtyard whose roots could undermine any water or sewage lines; (iv) operate a grill within ten (10) feet of the Neighbor's Wall; (v) throw any ball, projectile or object of any kind or spray anything against a Neighbor's Wall; (vi) intentionally cause any damage to the Neighbor's Wall; (vii) erect any structure, including, but not limited to, an arbor or deck, that will interfere with the easement rights of an adjacent Lot set forth in this Declaration; (viii) erect any structure, including, but not limited to, an arbor or pergola that is taller than the Courtyard Fence without the prior permission of the ARB; (ix) install additional concrete; (x) install pavers within three (3) feet of the Neighbor's Wall; or (xi) play loud music or make loud noises within the Courtyard that disturb the quiet enjoyment rights of the Owner of the adjacent Lot.

11.13 Mutual Reciprocal Access Easement. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for itself, the Association and each Owner the right to use a portion of any Lot which lies in an Alley as shown on the subdivision plat to provide access to each Lot from a public right of way. An Owner of a Lot may not take any action that obstructs the free passage of automobiles, bicycle or pedestrian traffic of any kind on or over any portion of an Alley located on such Owner's Lot. This includes parking automobiles on a driveway that serves a dwelling on a Lot in such a way that impedes or obstructs the free passage of automobiles, bicycle or pedestrian traffic of any kind on or over any portion of an Alley located on a Lot. In the event that an Owner obstructs an Alley in contravention of this Paragraph, the Association shall have the right to remove the obstruction and to bill the cost thereof to the Owner causing such obstruction and to place a lien of the Lot of such Owner to collect the cost of removing such obstruction.

The Alley shall be an Area of Common Responsibility and the Association shall have the duty to repair and maintain the Alley in accordance with the terms of Paragraph 11.6 hereof.



## ARTICLE 12. MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the 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 Properties 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 By-Laws relating to such Lot or the Owner or occupant which is not cured within sixty (60) Days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2 No Priority. No provision of this Declaration or the By-Laws 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.

12.3 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.

12.4 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.

12.5 Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

## ARTICLE 13. DECLARANT'S RIGHTS

13.1 Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents 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 By-Laws. Upon any such transfer, the Declarant shall 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.

13.2 Development and Sales. The Declarant and Builders authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant and authorized Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and Builders authorized by Declarant may establish within the Properties such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, including, but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

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

13.4 Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, By-Laws or Articles.

13.5 Right of the Declarant to Disapprove Actions. Until two (2) years following the termination of the Class “B” membership, the Declarant shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant or Builders under the Governing Documents, or interfere with development of, construction on, or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Declarant in the Governing Documents:

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the secretary of the Association, which notice complies with the By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as provided in the By-Laws.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting of which Declarant had actual notice, at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) Days following Declarant’s receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.6 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules shall be effective without prior notice to and the written consent of the Declarant during the Development Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this

Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## ARTICLE 14. GENERAL PROVISIONS

### 14.1 Duration.

(a) Unless terminated as provided in Section 14.1(b), the provisions of this Declaration shall run with, bind the Properties and remain in effect perpetually to the extent permitted by law; provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land for so long as permitted by Georgia law. To the extent that Georgia law 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 twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Georgia law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Lots within the Properties, which instrument is recorded in the Public Records; provided however, regardless of the provisions of Georgia law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Lots and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies with the requirements of O.C.G.A. § 44-5-60(d) and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

### 14.2 Amendment.

(a) By Declarant. Until termination of the Class “B” membership, Declarant may amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state

or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. The failure of an amendment to apply uniformly to all Lots shall not constitute a material adverse effect upon the rights of any Owner.

(b) By Board. The Board shall be authorized to amend this Declaration without the consent of the Members (i) for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220, et seq. (1994) and conforming this Declaration to any mandatory provisions thereof; (ii) to correct scrivener's errors and other mistakes of fact; and (iii) for the purposes of bringing any provision contained herein into compliance with the Fair Housing Amendments Act of 1988; provided that amendments under this provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, 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.

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (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. 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, the Class "B" Member, or the assignee of such right or privilege.

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

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

14.4 Fair Housing Amendments Act. The provisions of the Governing Documents shall be subordinate to the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, et seq., (hereinafter referred as "FHAA"), and shall be applied so as to comply with the FHAA. In the event that there is a conflict between or among the Governing Documents and the FHAA, the

FHAA shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the FHAA, the Board of Directors, without the consent of the Members or of the Declarant, shall have the unilateral right to amend this Declaration for the purpose of bringing this Declaration into compliance with the FHAA.

14.5 Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, the parties may proceed with litigation.

14.6 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding eighty percent (80%) of the total Class "A" votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (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; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.7 Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, 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 Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.8 Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

14.9 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions and declarations. The Association may, but shall not be required to, any such additional covenants, conditions and provisions. In the event of a conflict between or among this Declaration and any additional covenants or restrictions, and/or the provisions of the Articles of Incorporation, By-Laws, rules and regulations, policies or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles and rules and regulations of the Association shall prevail. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties 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.

14.10 Use of the "GRACE BY WINDSONG" Name and Logo. No Person shall use the words "GRACE BY WINDSONG" or the logo for "GRACE BY WINDSONG" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "GRACE BY WINDSONG" in printed or promotional matter where such terms are used solely to specify that particular property is located within GRACE BY WINDSONG, and the Association, and the Declarant shall each be entitled to use the words "GRACE BY WINDSONG" in their names.

14.11 Compliance. Every Owner and occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association, the Declarant, or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

14.12 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a 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. After the transfer of title, 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, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.13 Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this \_\_\_\_ day of April, 2017.

Signed, sealed and delivered in the presence of:

Declarant:  
Wintergreen Development, LLC

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

\_\_\_\_\_  
(SEAL)

By: Mark L. Carruth  
Its: Managing Member

\_\_\_\_\_  
Notary Public

COMPANY SEAL



EXHIBIT "A"  
INITIALLY SUBMITTED PROPERTY

EXHIBIT "B"  
ADDITIONAL PROPERTY

EXHIBIT "C"

Form of By-Laws of GRACE BY WINDSONG Homeowners Association, Inc.

(See Attached)

BY-LAWS  
OF  
GRACE BY WINDSONG HOMEOWNERS ASSOCIATION, INC.

ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1 Name. The name of the corporation is Grace by Windsong Homeowners Association, Inc. (the “Association”), a Georgia nonprofit corporation.

1.2 Principal Office. The initial principal office of the Association shall be located in Cherokee County, Georgia. The Association may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions and Restrictions for Grace by Windsong filed in the Public Records, as it may be amended (the “Declaration”), unless the context indicates otherwise.

ARTICLE 2: ASSOCIATION MEMBERSHIP, MEETINGS, QUORUM, VOTING,  
PROXIES

2.1 Membership. The Association shall have two (2) classes of membership, Class “A” and Class “B,” as more fully set forth in Article 3.2 of the Declaration, the terms of which pertaining to membership are incorporated by this reference. The Declarant may establish additional classes of membership as set forth in the Declaration.

2.2 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as is possible and practical. Meetings may be held by means of telephone conference, video conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation by one of these methods shall constitute presence in person at such meeting.

2.3 Annual Meeting. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Meetings shall be of the Members. Subsequent regular meetings shall be held annually on a date and at a time set by the Board.

2.4 Special Meetings. The President may call special meetings. In addition, it shall be the duty of the president to call a special meeting within thirty (30) Days if so directed by resolution of the Board or upon a petition signed by Members holding at least twenty percent (20%) of the total Class “A” votes in the Association or upon written request of the Declarant.

2.5 Notice of Meetings. Written notice stating the place, day, time, and purpose of any meeting of the Members shall be delivered to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) Days before the date of such meeting, by or at the direction of the president or the secretary or the officers or persons calling the meeting.

No business shall be transacted at a meeting except as stated in the notice; provided however, if Members holding at least twenty percent (20%) of the Class “A” votes are present at an annual meeting, in person or by proxy, matters in addition to those set forth in the notice of the meeting may be voted upon without further notice to the Members.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof, unless a specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a meeting shall also be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than twenty (20) Days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 2.5.

2.8 Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access.

2.9 List for Voting. After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list shall show the address of the Member and the number of votes each is entitled to vote at the meeting. The list for voting shall be made available for inspection in accordance with Georgia law.

2.10 Proxies. At all meetings of the Members, each Member may cast its votes in person (if a corporation, partnership, limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Georgia law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing specifying the Lot(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated, and filed with the secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11 Quorum. The presence, in person or by proxy, of Members holding one-third (1/3) of the Class "A" votes entitled to be cast shall constitute a quorum at all meetings of the Association. If a quorum is present at a duly called or held meeting, business may be continued until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.12 Conduct of Meetings. The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Association may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be signed within sixty (60) Days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Georgia. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) Days after receiving authorization for any action by written consent, the secretary shall give written notice to all Members summarizing the material features of the authorized action.

## ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

### A. Composition and Selection.

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class “B” Member, serving as a representative of the Declarant, the directors shall be eligible Members or residents; provided however, no Owner and resident representing the same Lot may serve on the Board at the same time. No Owner or resident shall be eligible to serve as a director if any assessment for such Owner’s or resident’s Lot is delinquent. A “resident” for purposes of these By-Laws shall mean any natural person eighteen (18) years of age or older whose principal place of residence is a Lot within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, member, manager, employee, or fiduciary of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided that, no Member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by or serving as representatives of the Class “B” Member, or the Declarant.

3.2 Number of Directors. The Board shall consist of three (3) directors. The number of directors may be changed by resolution of the Board.

3.3 Directors During Class “B” Membership. All three (3) directors shall be appointed by the Class “B” Member acting in its sole discretion and shall serve at the pleasure of the Class “B” Member. Directors appointed by or serving as representatives of the Class “B” Member or the Declarant shall not be subject to the qualifications for directors set forth in Section 3.1.

### 3.4 Nomination and Election Procedures.

(a) Nomination of Directors. Except with respect to directors appointed by the Class “B” Member, directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. Directors appointed by or serving as representatives of the Class “B” or the Declarant shall not be subject to these nomination requirements.

(b) Election Procedures. Each Member may cast the vote(s) assigned to the Member’s Lot(s) for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 Election and Term of Office. Notwithstanding any other provision of these By-Laws, not later than the first annual meeting after the termination of Class “B” membership, the directors appointed by the Declarant shall resign, and the Association shall hold an

election at which the Class “A” Members shall be entitled to elect all of the directors. Two (2) directors shall serve a term of two (2) years, and one (1) director shall serve a term of one (1) year, as such directors determine among themselves. Upon the expiration of the term of office of each director elected by the Class “A” Members, the Class “A” Members shall elect a successor to serve a term of two (2) years. Directors shall hold office until their respective successors have been elected.

3.6 Removal of Directors and Vacancies. Any director elected by the Class “A” Members may be removed, with or without cause, by the Class “A” Members holding at least two-thirds (2/3) of the total Class “A” votes allocated to Lots, but shall not be subject to removal solely by the Class “B” Member. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class “A” Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class “A” Members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) Days delinquent (or is the resident of a Lot that is delinquent or is an officer, director, partner, member, employee, or trust officer of a Member who is delinquent) in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Class “A” Members may elect a successor for the remainder of the term.

In the event of the death, disability, or resignation of an elected director or the adoption of a Board resolution increasing the number of directors, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class “A” Members may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class “B” Member nor to any director serving as a representative of the Declarant. The Class “B” Member, the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class “B” Member, the Declarant.

#### B. Meetings.

3.7 Organizational Meetings. Within thirty (30) Days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each year.



3.9 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the president or vice president or by any two (2) directors.

3.10 Notice. Notice of a regular meeting shall be communicated to directors not less than four (4) Days prior to the meeting. Notice of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (1) overnight or same day delivery, charges prepaid; or (g) electronic mail or e-mail using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an electronic mail or e-mail address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, electronic mail, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, electronically mailed, e-mailed, or given to the telegraph company.

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

3.12 Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.13 Quorum of Board of Directors. At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot

be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) Days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.14 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members holding a Majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the Board of Directors, excluding the interested director.

3.15 Conduct of Meetings. The president shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

3.16 Open Meetings. Subject to the provisions of Sections 3.12 and 3.17, all meetings of the Board shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on an attendee's behalf by a director. In such case, the president may limit the time any individual may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude Persons other than directors, to discuss matters of a sensitive nature, including, but not limited to pending or threatened litigation and personnel matters.

3.17 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

#### C. Powers and Duties.

3.18 Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things that the Governing Documents or Georgia law does not direct to be done and exercised exclusively by the membership generally.

3.19 Duties. The duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;

(b) levying and collecting such assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;

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

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association, provided any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules in accordance with the Declaration;

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

(h) contracting for repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association in accordance with the Governing Documents;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the costs of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or ARB or committee member, or former director, officer or ARB or committee member of the Association to the extent such indemnity is required or permitted under Georgia law or the Governing Documents; and

(p) assisting in the resolution of disputes between Owners and others without litigation as set forth in the Declaration.

3.20 Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(f) an annual financial report shall be made available to all Members within one hundred twenty (120) Days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines.

3.22 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of Members holding at least sixty-seven percent (67%) of the total votes allocated to Lots prior to borrowing such money.

3.23 Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within and outside the Properties.

3.24 Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed pursuant to Article 5, within fifteen (15) Days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) Days of the notice. If a timely request for a hearing is not received, the sanction stated in the notice shall be imposed; provided however, the Board or covenants committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) Day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) Day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or covenants committee may impose a sanction without further notice to the violator. The Board may, but shall not be obligated to, adopt a schedule of sanctions for violations of the Governing Documents.

(b) Hearing. If a hearing is requested within the allotted fifteen (15) Day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

(c) Appeal. If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within fifteen (15) Days after the hearing date.

#### ARTICLE 4: OFFICERS

4.1 Officers. The officers of the Association shall be a president, secretary, and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one (1) or more vice presidents, one (1) or more assistant secretaries and one (1) or more assistant treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each election of new directors. Such officers shall serve until their successors are elected.

4.3 Removal and Vacancies. The Board may remove any officer at any time in its sole discretion with or without cause and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The secretary shall be responsible for preparing minutes of meetings of the Association and the Board and for authenticating records of the Association.

4.5 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Execution of Instruments. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.14.

## ARTICLE 5: COMMITTEES

5.1 General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Unless otherwise provided by the Board, committee members shall be eligible Members or residents; provided however, no Class "A" Member may have more than one (1) representative on a committee at any time. No committee appointed by the Board shall be empowered to take any affirmative action nor to bind the Board or the Association without the consent of the Board.

## ARTICLE 6: MISCELLANEOUS

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3 Conflicts. If there are conflicts between the provisions of Georgia law, the Master Documents, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Master Documents, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

### 6.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to such Person's interest in a Lot: the Declaration, By-Laws, and Articles of Incorporation, any amendments and supplements to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association, which may include the office of the Association's management agent, if any, or at such other place within the Properties as the Board shall designate during normal business hours.

(b) Rules for Inspection. The Board may establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made;

and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5 Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request in writing additional methods of receiving notice, including but not limited to, facsimile, electronic mail or e-mail.

#### 6.6 Amendment.

(a) By Declarant. Until termination of the Class “B” membership, the Declarant may unilaterally amend these By-Laws for any purpose. Thereafter, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the U.S. Department of Veterans Affairs (“VA”), the U.S. Department of Housing and Urban Development (“HUD”), the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. The failure of an amendment to apply uniformly to all Lots shall not constitute a material adverse effect upon the rights of any Owner. In addition, during the Development Period, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.



(b) By the Board. The Board shall be authorized to amend these By-Laws without the consent of the Members (i) for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220, et seq. (1994) and conforming these By-Laws to any mandatory provisions thereof, (ii) to correct scriveners' errors and other mistakes of fact, provided that any amendments under this provision have no material adverse effect on the rights of the Members; and (iii) for the purpose of bringing any provision contained herein into compliance with the Fair Housing Amendments Act of 1988, as more fully set forth in Section 14.4 of the Declaration. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least two-thirds (2/3) of the total Class "A" votes in the Association, and, during the Development Period, 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.

(d) Validity and Effective Date. Any amendment to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (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 these By-Laws.

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, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.