



10-01-2018

JOHNS CREEK, GEORGIA

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# Declaration of Covenants, Conditions, and Restrictions For Fox Creek

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR FOX CREEK (hereinafter referred to as the "Declaration"), made this 10th day of October, 1991, by Brooks Horton Development Corporation of Georgia, Inc., a Georgia corporation (hereinafter referred to as "Declarant").

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

**WHEREAS**, Declarant is the Owner of certain real property located in Fulton County, Georgia, which is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property"); and

**WHEREAS**, Declarant deems it desirable to create the Fox Creek Residents Association (as hereinafter defined) to own, maintain, and administer the Common Areas (as hereinafter defined) in accordance with the Covenants and Restrictions as hereinafter provided and to insure the enjoyment of such Common Areas by such residents; and

**WHEREAS**, Declarant intends that every Owner (as hereinafter defined) of a Dwelling (as hereinafter defined) which is made subject to this Declaration does automatically and by reason of such ownership, and by reason of this Declaration, become a member of the Fox Creek Residents' Association and subject to its valid rules and regulations and subject to the assessments by the Association pursuant thereto; and

**WHEREAS**, as hereinafter provided in this Declaration, Declarant has retained and reserved the right, privilege, and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the residential community described herein such other property as Declarant may acquire from time to time and wish to subject to the terms of the Declaration; and

**WHEREAS**, in connection with the development of the aforesaid residential community, Declarant reserves the right, privilege and option to develop amenities and recreational areas to be located on certain Common Area(s) within the Property, the current contemplated location of the Common Area being more particularly described in **Exhibit "B"** attached hereto and incorporated herein by this reference;

**NOW, THEREFORE**, Declarant hereby declares that all of the Property described in **Exhibit "A"** and any additional property as may by subsequent annexation hereto be subjected to this Declaration shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions, which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the real property subjected to this Declaration, and which shall be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall insure to the benefit of each Owner thereof.

## **ARTICLE I DEFINITIONS**

### **1.01 Definitions.**

When used in this Declaration, unless the context shall prohibit or otherwise require, the following terms shall have all the following meanings; moreover, all definitions shall be applicable to and shall include both the singular and plural forms of each term:

- (a) **“Additional Property”** shall mean and refer to real property and all improvements thereon, as Declarant shall acquire from time to time and by recording an approved subdivision plat that expressly sets forth Declarant’s intention to make such additional property subject to the provisions of this Declaration in the records of the Clerk of the Superior Court of Fulton County, Georgia.
- (b) **“Architectural Standards Committee”** shall mean and refer to the committee which shall be appointed by the Association’s Board of Directors to approve exterior and structural improvements, additions, and changes within the development as provided in Article X hereof. The rules and regulations pursuant to which such Architectural Standards Committee shall act shall be prescribed by the Board of Directors.
- (c) **“Articles of Incorporation”** shall mean and refer to the Articles of Incorporation of Fox Creek Residents’ Association, Inc., as amended from time to time.
- (d) **“Assessment”** shall mean and refer to an Owner’s share of the common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.
- (e) **“Association”** shall mean and refer to Fox Creek Residents’ Association, Inc., a nonprofit corporation organized and existing under the laws of the State of Georgia.
- (f) **“Board of Directors”** or **“Board”** shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.
- (g) **“Builder”** shall mean and refer to any person or entity who is constructing a Dwelling on the Property.
- (h) **“Bylaws of the Association”** or the **“Bylaws”** shall mean and refer to those Bylaws of Fox Creek Residents’ Association, Inc., which govern the administration and operation of the Association, as the same may be amended from time to time.
- (i) **“Common Areas”** shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Occupants and Owners, including, but not limited to, any maintenance areas, easement areas, rights-of-way, walkways, sidewalks, recreational areas, street lighting, signage, entrance areas, etc., as may from time to time be deemed “Common Areas,” by the recordation of a final subdivision plat approved by all authorities, designating certain tracts or parcels of land as “Common Areas,” less and except those properties, roadways, walkways, sidewalks, easements and other properties that may from time to time be dedicated by either the Declarant or the Association to the public. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large

acquires any easement of use or enjoyment therein.

- (j) **“Common Expenses”** shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provision of this Declaration.
- (k) **“Declarant”** shall mean and refer to the Person (hereinafter defined) who has executed this Declaration, or any successor-in-title to the entire interest of such Person with respect to the Property and the Additional Property at the time of such transfer to said successor-in-title, or any party who acquires said Person’s entire interest with respect to the Property and Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Person’s interest in the Property and Additional Property.
- (l) **“Declaration”** shall mean and refer to all covenants, conditions, restrictions, charges, and liens set forth in this instrument for Fox Creek and all amendments thereof, filed for record in the records of the Clerk of the Superior Court of Fulton County, Georgia.
- (m) **“Development”** shall mean and refer to the Property and all improvements located or constructed thereon, and any Additional Property submitted from time to time to the provisions hereof pursuant to Section 2.02.
- (n) **“Dwelling”** shall mean and refer to each improved property intended for use as a single-family detached dwelling located within the Development.
- (o) **“Foreclosure”** shall mean and refer to, without limitation, the judicial or nonjudicial foreclosure of a Mortgage, or the conveyance of secured property by a deed in lieu of foreclosure.
- (p) **“Institutional Mortgage”** shall be deemed to mean a Mortgage held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.
- (q) **“Lease”** shall mean and refer to any lease, sublease, assignment, or rental contract, whether oral or written.
- (r) **“Lot”** shall mean and refer to any parcel of land located on the Property upon which a Dwelling can be constructed. The term “Lot,” shall also mean and refer to other parcels of land presently owned by Declarant described on Exhibit “A” as part of the Property, which parcels have not yet been developed into single-family lots via subdivision plat by Declarant, but of which parcels Declarant hereby retains an option in further subdividing. Said parcel of land shall be deemed unimproved, and thus considered to be a Lot, rather than a Dwelling, until all the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereon. Upon such completion, such parcel and the improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.
- (s) **“Mortgage”** shall mean and refer to a security deed, deed of trust, mortgage, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot or Dwelling.
- (t) **“Mortgagee”** shall mean and refer to the holder of a Mortgage.

- (u) **“Occupant”** shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, assignee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Dwelling within the Development.
- (v) **“Owner”** shall refer to any Persons (as hereinafter defined) who are or shall be record owners by purchase, transfer, or assignment of foreclosure of a fee or undivided fee interest in a Dwelling within the Property, excluding, however, those persons having an interest merely as security for the performance of an obligation, such as an interest under a Mortgage.
- (w) **“Person”** shall mean and refer to a natural person, corporation, partnership, joint venture, association, trust, or other legal entity, or any combination thereof.
- (x) **“Property”** shall mean and refer to those tracts or parcels of land described on Exhibit “A” together with all improvements thereon, including, but not limited to, the Common Areas, roads, utility systems, drainage systems, and other improvements serving the Lots and Dwellings, and other parcels of the Property, and, upon submission to the provisions of this Declaration, any tracts or parcels of land hereafter annexed thereto, together with all improvements thereon. The term “Property” shall also include any appurtenant easements as may be obtained from time to time to benefit the Property, or any part thereof.

## **ARTICLE II**

### **2.01**

#### **Development of Property.**

Except as otherwise set forth in Section 10.10, all Lots within the Development shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in Article X hereof. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option (as defined in Section 2.02) to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Declarant or of the Common Areas, (iii) changes in the boundaries between the Common Areas and any portion of the Property owned by Declarant (or any Additional Property submitted to the terms hereof), (iv) installation and maintenance of any water, sewer, and other utility systems and facilities, (v) installation of security and/or refuse facilities, and (vi) the right to further subdivide Lots in accordance with all applicable subdivision and zoning regulations ordinances and statutes, including those parcels of land described as a portion of the total land set forth on Exhibit “A” hereto, which parcels Declarant reserves the right, privilege and option of subdividing in accordance with applicable laws, ordinances and statutes.

### **2.02**

#### **Development of Additional Property.**

Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time Additional Property to become part of the Property. This option may be exercised by Declarant in accordance with the following rights, conditions, and limitations, which are the only conditions and limitations on such option to add Additional Property to the Development:

- (a) The option may be exercised from time to time during a period of fifteen (15) years from the date of this Declaration; provided, however, that Declarant reserves the right to terminate such option at any time prior to the expiration of such fifteen (15) year period by executing and filing an agreement evidencing such termination in the records of the Clerk of the Superior Court of Fulton County, Georgia. No other circumstances will terminate such option prior to the expiration of such fifteen (15) year period.
- (b) The Additional Property may be added to the Development at different times, and there are no limitations fixing the boundaries of those parcels or regulating the order, sequence, or location in which any of such parcels may be added to the Development. The exercise of the option to submit Additional Property to the Declaration shall not bar the future exercise of this option as to other parcels of Additional Property.
- (c) If Additional Property is added to the Development, Declarant reserves the right to designate the boundaries of the Lots and Dwellings, as well as the Common Areas, if any, to be added to the Development in connection therewith.
- (d) Should the option to add Additional Property not be exercised within the term specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect.
- (e) The option reserved by Declarant to cause. Additional Property to become part of the Development shall in no way be construed to impose upon Declarant any obligation to add Additional Property to the Development or to construct thereon any improvements of any nature whatsoever.

The option reserved under this Section 2.02 may be exercised by Declarant only by submitting an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such Additional Property subject to the provisions of this Declaration, which plat shall be filed in the records of the Clerk of the Superior Court of Fulton County, Georgia. Declarant shall convey to the Association the Common Areas, if any, contained within the Additional Property, such conveyance to be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Property and/or the Additional Property, and any exceptions which would be disclosed by an accurate survey or physical inspection of such parcel(s). Any such plat shall expressly submit the Additional Property or such portion thereof to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as embracing the real property described in **Exhibit "A"** and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements located thereon. If Additional Property is added to the Development, then from and after the addition to the Development of Additional Property the number of votes in the Association shall be increased by the number of Lots or Dwellings to be located on the Additional Property so that there shall continue to be one vote in the Association per Lot or Dwelling in the Development.

## **2.03**

### **Interest Subject to Plan of Development.**

Every purchaser of a Lot or Dwelling shall purchase such Lot or Dwelling and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, and Declarant shall have and does hereby specifically reserve the right to add Additional

Property to the Development as hereinabove provided, and, with respect to each Lot or Dwelling located within the Additional Property, to convey to the purchaser thereof the title to the Lot or Dwelling and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

## **2.04**

### **Subdivision Plat.**

Declarant reserves the right to record, modify, amend, revise, and add to, at any time and from time to time, a subdivision plat(s) setting forth such information as Declarant may deem necessary with regard to the Development, including, without limitation the locations, further subdivisions, and dimensions of the Lots, Dwellings, Common Areas, Additional Property, roads, utility easements and systems, drainage easements and systems, right-of-way easements, and set-back line restrictions and Declarant's intention to make such real property subject to the provisions of this Declaration.

## **ARTICLE III** **PROPERTY RIGHTS**

## **3.01**

### **General.**

Each Dwelling shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Dwelling, subject to the provisions of this Declaration, including, without limitation, the provisions of this Article III. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services to a Dwelling lie partially within and partially outside of the designated boundaries of the Dwelling in question, then any portion thereof which serve only such Dwelling shall be deemed to be a part of such Dwelling. Any portions thereof which serve more than one Dwelling, or any portion of the Common Areas, shall be deemed to be a part of the Common Areas. The ownership of each Dwelling shall include, and there shall pass with each Dwelling as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title or successor-in-interest to his Dwelling. Upon any transfer of interest, such former Owner shall simultaneously transfer and endorse to his successor any certificates or other evidences of his membership in the Association. Except as provided in Sections 2.01 and 3.06 hereof, Lots shall not be subdivided, and the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the consent of at least a majority of the members in the Association and Declarant, so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two or more Lots into a larger parcel in order to create a Dwelling site larger than one Lot. Each Lot in the subdivision shall be subject to easements, if any, which are shown on the plat as affecting such Lot.



### 3.02

#### **Owner's Easement of Enjoyment.**

Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the Bylaws and the terms hereof, every Owner, his family, tenants, and guests shall have a nonexclusive right, privilege, and easement of use and enjoyment in and to the Common Areas (including, without limitation, the right of pedestrian and vehicular access, ingress, and egress over the portions of the Common Areas designated for such use and the right of use of recreational facilities as erected and maintained by the Association), which right and easement shall be appurtenant to and shall pass and run with the title to each Dwelling, subject to the following provisions:

- (a) The right of the Association to borrow money (i) for the purpose of improving the Common Areas or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining, or improving any facilities located or to be located within the Common Areas, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a security deed instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interests, options, licenses, easements, and privileges herein reserved or established for the benefit of the Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.
- (b) The rights and easements reserved to Declarant in this Article III of the Declaration.
- (c) The right of the Association to grant and accept easements as provided in Section 3.07 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to Fulton County, Georgia, or to any other public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of the members of the Association present in person or by proxy at a meeting of the Association and Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development.
- (d) The rights and easements reserved in Section 3.09 hereof for the benefit of the Association, its directors, officers, agents, and employees.
- (e) The rights and easements reserved in Section 3.10 hereof for the benefit of Additional Property.
- (f) The rights of the holder (and its successors and assigns) of any mortgage which is prior in right of superiority to the rights, interests, options, licenses, easements, and privileges herein reserved or established.
- (g) The rights of Declarant to limit appurtenant utility and drainage easements to certain Lots within the Development; it being provided that although certain appurtenant easements may be created to serve less than all Lots, that any maintenance, repair, replacement or construction of improvements within said easements may be deemed to be "Common Expenses" of the entire Association.

### **3.03**

#### **Delegation of Use.**

Subject to the terms and provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors, every Owner may delegate, in accordance with the Bylaws, his right of use and enjoyment in and to the Common Areas and the improvements thereon, if any, to the members of his family, his tenants, guests, invitees, or occupants.

### **3.04**

#### **Easements for Declarant.**

During the period that Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development, Declarant shall have alienable and transferable rights-of-way and easements in, on, over, through, under, and across the Common Areas for the purpose of constructing Dwellings and other improvements in and to the Lots and the Additional Property for:

- (a) Installing, maintaining, repairing, and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof.
- (b) The purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.
- (c) For use as sales offices, model homes, and parking spaces in connection with its efforts to market Lots.
- (d) For the maintenance of such other facilities, equipment, and signs as in the sole discretion of Declarant may be reasonably required, convenient, or incidental to the completion, improvements, and sale of Lots.
- (e) Access, ingress, and egress to the Common Areas and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development to the use of the Common Areas.

### **3.05**

#### **Title to Common Areas.**

Declarant may from time to time convey to the Association, at no expense to the Association, real and personal property for the common use and enjoyment of the Owners. The Association hereby covenants and agrees to accept from Declarant all such conveyances of real and personal property. Notwithstanding any legal presumption to the contrary, the fee simple title to such real and personal property designated as Common Areas or for public use, together with all rights therein, shall be reserved to Declarant until such time as the real and/or personal property is conveyed by the Association or to any municipality or other governmental body, agency, or authority.

### **3.06**

#### **Changes in Boundaries; Additions to Common Areas.**

Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Areas, any Lots or Dwellings owned by Declarant, including the

realignment of boundaries between adjacent Lots or Dwellings owned by Declarant, and to further subdivide the Property, subject to all applicable advances, statutes, and regulations. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of Additional Property, such real property to be conveyed to the Association as an addition to the Common Areas and subject to the title exceptions set forth in Section 2.02 hereof. Furthermore, Declarant reserves for itself, its affiliates, successors, and assigns the right, but shall not have the obligation, to convey by quitclaim deed to the Association at any time and from time to time, as an addition to the Common Areas, such other portion of the Development owned by Declarant as it, in its discretion, shall choose.

### **3.07**

#### **Easements for Utilities and Public Services.**

- (a) There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from Fulton County, Georgia or any other public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across: (i) all of the common Areas, (ii) those portions of all Lots and Dwellings, and (iii) other properties as are reasonably necessary for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems, and retention ponds and facilities for the Development or any portion thereof, and electrical, gas, telephone, water, and sewer lines, provided that such easements shall not unreasonably affect the developability, marketability, or value of any such Lot or Dwelling. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board of Directors; provided, however, that for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall take reasonable actions to repair, in a workmanlike manner, any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.
- (b) Declarant hereby grants to Fulton County, Georgia or such other governmental authority or agency as shall from time to time have jurisdiction over the Development with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Development as shall be required or appropriate by such governmental authorities under applicable law.

### **3.08**

#### **Easements for Walks, Trails, Signs, and Perimeter Wall.**

There is hereby reserved for the benefit of Declarant, the Association, and their respective successors

and assigns, the alienable, transferable, and perpetual right and easement upon, over, and across those strips of land ten (10) feet in width located along and adjacent to those exterior boundaries located adjacent to streets and roads for all Lots and all Dwellings, such strips to be bounded by such exterior boundaries adjacent to streets and roads and by lines in the interior of such Lots and Dwellings which are ten (10) feet from and parallel to such exterior boundaries, for the installation, maintenance, and use of sidewalks, traffic directional signs, and related improvements, provided that Declarant shall have no obligation to construct any such improvements. There is further reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable and perpetual right and easement upon, over, and across those strips of land fifteen (15) feet in width located along those boundaries of all Lots and Dwellings that constitute part of the perimeter boundary of the Development, such easement to be for the purpose of constructing, installing, replacing, repairing and maintaining a perimeter wall or fence around the perimeter boundary of the Development, provided that Declarant shall have no obligation to construct any such perimeter wall or fence.

### **3.09**

#### **Easements for Association.**

There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or Dwelling or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or Occupant of the Lot or Dwelling directly affected.

### **3.10**

#### **Easements for Additional Property.**

There is hereby reserved in Declarant, and its successors, assigns, and successors-in-title to the Additional Property (if said rights are granted by Declarant to such successors, assigns, and successors-in-title), for the benefit of and as an appurtenance to Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for (i) pedestrian and vehicular ingress, egress, and parking, across, within, and on all roads, sidewalks, trails and parking facilities, from time to time located within the Common Areas or within easements serving the Common Areas, (ii) the installation, maintenance, repair, replacement, and use within the Common Areas and those portions of Lots or Dwellings encumbered pursuant to Section 3.07 hereof of security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water, sewer, and master television antenna and/or cable systems lines, and (iii) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Property or any improvements from time to time located thereon.

### **3.11**

#### **Maintenance Easement.**

Subject to the terms of Section 5.02(b) hereof, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Lot and upon unimproved portions of any Dwelling for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

### **3.12**

#### **Environmental Easement.**

There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable and perpetual right and easement on, over, across all Lots and all unimproved portions of Dwellings for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

### **3.13**

#### **Sales and Construction Offices.**

Notwithstanding any provisions of restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns the alienable and transferable right and easement in and to the Property, including the Common Areas, for the maintenance of signs, sales offices, construction offices, business offices, and model Dwellings, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement, and/or marketing and sale of Lots, Dwellings, Common Areas, or the Additional Property, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development.

## **ARTICLE IV** **MEMBERSHIP AND VOTING RIGHTS**

### **4.01**

#### **Membership.**

Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling, and said ownership of a Dwelling shall be the only qualification for such membership. In the event that fee simple is transferred or otherwise conveyed, then membership in the Association which is appurtenant thereto shall automatically pass to such transferee, notwithstanding any failure of the transferor or endorser to this transferee's certificates or other evidences of such membership. Membership is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. No Builder shall be considered an Owner, and therefore shall not be liable for assessments assessed by the Association, unless the Builder occupies a Dwelling. Moreover, a tenant occupying a Dwelling may be personally liable for assessments unless otherwise paid for by the Owner of such Dwelling. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Dwelling. In the event of multiple Owners of a Dwelling, votes and rights of use and enjoyment shall be provided herein. The rights and privileges of membership including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse but in no event shall more than one vote be cast or more than one office be held for each Dwelling, and further, provided that a member casting a vote or holding an office with respect to his Dwelling shall not be entitled to cast an additional vote or to hold an additional office for the Lot upon which his residential unit is located. When more than one person holds an interest in any Dwelling, the vote for such Dwelling shall be exercised by those Owners of such Dwelling as they themselves determine and advise the Secretary or an Assistant Secretary of the Association prior to any meeting. In the absence of such advice, the vote appurtenant

to such Dwelling shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each Dwelling is equal and each Dwelling shall have one vote. Each Owner, by acceptance of a deed or other conveyance for a Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission from time to time of Additional Property to the terms of this Declaration as provided herein.

#### **4.02**

##### **Voting.**

The Association shall have two classes of voting membership:

##### **Class A.**

Class members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Dwelling owned. The vote for such Dwelling shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Dwelling.

##### **Class B.**

The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot or parcel of the Property owned. If and to the extent that Declarant further subdivides any Lots or parcels of the Property as herein discussed, then Declarant shall be allocated three (3) votes for each subdivided Lot or unsubdivided parcel that is not otherwise considered Common Area. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B membership, or
- (b) When the 15-year (fifteen-year) option to add Additional Property to the Development expires.

## **ARTICLE V** **MAINTENANCE**

#### **5.01**

##### **Responsibilities of Owners.**

Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots and Dwellings, together with all other improvements thereon or therein and all lawns, landscaping, and grounds on and within a Lot or Dwelling, shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his or her Lot or Dwelling as the case may be, in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. As provided in Section 5.02(b) hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner but which responsibility such Owner fails or refuses to discharge. No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds, or make other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the Architectural Standards Committee as provided in Article X hereof, or (ii) do any work which, in the reasonable opinion of the Architectural Standards Committee, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto,



without in every such case obtaining the written approval of the Architectural Standards Committee. Notwithstanding the foregoing, the terms of this Paragraph shall not apply to those parcels of the Property submitted hereby but not yet subdivided and platted via subdivision plat; the provisions of the Paragraph to become applicable only when said parcel(s) are subdivided by the filing of a final plat in the Fulton County, Georgia Deed Records Department.

## 5.2

### **Association's Responsibility.**

- (a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair, and replacement of (i) all roads, walks, trails, parking lots, landscaped areas, recreational areas, and other improvements made by Declarant or the Association situated within the Common Areas or within easements encumbering Lots or Dwellings, pursuant to Section 3.04 and 3.08 hereof, (ii) such security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping and all lakes and ponds situated within or upon the Common Areas and, (iv) all retention areas and facilities constructed by Declarant wherever located. The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.
- (b) In the event that Declarant or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner as the case may be, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner.

In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the assessment to which such Owner and his Lot or Dwelling are subject and shall become a lien against such Lot or Dwelling. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

### **5.03**

#### **Builder's Responsibility.**

In the event that a Builder ceases construction on a Dwelling for more than thirty (30) days, Declarant or the Board of Directors shall have the right, but not the obligation, to finish the exterior of the Dwelling in a workmanlike manner and maintain the Lot, keeping it free of trash and debris to prevent devaluation of other Lots in the Development. Costs in conformance with the Standards approved by the Architectural Standards Committee incurred for finishing the exterior of the Dwelling, as well as maintenance costs, shall be charged by the Declarant or the Association to said Builder. Both Declarant and the Association shall endeavor but shall not be required to follow the Builder's plans in completing the exterior of Dwelling. Should said Builder fail to reimburse Declarant or the Association for costs incurred, said costs shall become a lien against such Lot or Dwelling.

## **ARTICLE VI** **INSURANCE AND CASUALTY LOSSES**

### **6.01**

#### **Insurance.**

- (a) The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas (and other appurtenant easements, as may be deemed necessary by the Board of Directors), against loss or damage by fire or other hazards, including without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.
- (b) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas (and other appurtenant easements, as may be deemed necessary by the Board of Directors), and all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.
- (c) The Board or its duly authorized agents shall have the authority and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.



- (d) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the development shall be vested in the Board of Directors; provided, however, that no mortgage or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:
- (i) All policies shall be written with a company licensed to do business in the State of Georgia and holding a rating of A-XI or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible.
  - (ii) All property insurance policies shall be for the benefit of the Association and, to the extent that Declarant owns any portion of the Common Areas, to the benefit of Declarant, as their interests may appear, their successors and assigns.
  - (iii) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days' prior written notice of such cancellation to the Association and to any Mortgagee to which a mortgagee endorsement has been issued.
  - (iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.
  - (v) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests, and invitees, including without limitation, the Association's manager.
  - (vi) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents, employees, tenants, guests, and invitees, or on account of the acts of any director, officer, employee, or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.
  - (vii) All liability insurance shall contain cross liability endorsements to cover liability of the Association, to an individual Owner and shall also name the Declarant as an additional insured.
- (e) It shall be the individual responsibility of each Owner at his own expense to provide public liability, property, damage, title, and other insurance with respect to his own Lot and Dwelling. The Board of Directors may require all Owners to furnish copies of certificates thereof to the Association.

## **6.02**

### **Damage or Destruction to Common Areas.**

Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, shall mean repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Areas, Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development, together with at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess costs of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe, and attractive condition.

## **6.03**

### **Damage or Destruction to Lots or Dwellings.**

In the event of damage or destruction by fire or other casualty to any Lots or Dwelling, and in the further event that the Owner of such Lots or Dwelling responsible for the repair and replacement elects not to repair or rebuild the damaged or destroyed Lot or Dwelling, such Owner making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot or Dwelling in a clean, orderly, safe and attractive condition. Alternatively, should such Owner elect to repair or rebuild such Lot, Dwelling, or other improvements, such Owner shall repair or rebuild such Lot, Dwelling, or improvement to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restriction, and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable zoning, subdivision, building, and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently and in a workmanlike manner to conclusion.

## **ARTICLE VII CONDEMNATION**

## **7.01**

### **Condemnation of Common Areas.**

Whenever all or any part of the Common Areas of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the agreement of at least seventy-five percent (75%) of the total vote of the Association (which conveyance may only occur with the approval of Declarant, for so long as Declarant owns a Lot primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development), the award, or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

- (a) If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, for so long as Declarant owns a Lot primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development, together with at least seventy-five percent (75%) of the total membership of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefor, in accordance with the plans approved by the Board of Directors, the Architectural Standards Committee, and by Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.
- (b) If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are net funds remaining after any such restoration, or replacement of such improvements is completed, then such awards, proceeds, or net funds shall be retained by and for the benefit of the Association.
- (c) If the taking or sale in lieu thereof involves all or any part of a Lot or Dwelling and also includes any part of the Common Areas, then a court of competent jurisdiction shall apportion such award, or proceeds shall be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners of any Lot or Dwelling taken for their interest in such Lot or Dwelling; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board of Directors, (ii) the Owners of all Lots or Dwellings, together with the Mortgagee for each such Lot or Dwelling, and (iii) Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development.

### **7.02**

#### **Condemnation of Lots or Dwellings.**

- (a) In the event that all or any part of a Lot or Dwelling is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Lot or Dwelling responsible for the maintenance and repair of such Lot or

Dwelling, as the case may be, elects not to restore the remainder of the Lot or Dwelling, then such Owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Lot or Dwelling and any remaining undamaged improvements thereon in a clean, orderly, safe, and attractive condition. In addition, if the size or configuration of such Lot or Dwelling remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations, then such Owner shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean orderly, safe, and attractive condition referred to above, of deeding the remaining portion of the Lot or Dwelling to the Association (at no cost to the Association) as a part of the Common Areas, and thereafter any such Owner shall not have any further voting rights, membership rights, or privileges in the Association or with respect to the Development. In turn, said Owner shall not be subject to any further assessments imposed by the Association and payable after the date of such deeding.

- (b) In the event that any part of a Lot or Dwelling is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Lot or Dwelling responsible for the maintenance and repair of such Lot or Dwelling elects to restore the remainder of the Lot or Dwelling, such Owner making such election shall restore such remainder of such Lot or Dwelling as nearly as practicable to the same condition it was prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion in a reasonable amount of time.

## **ARTICLE VIII** **ADMINISTRATION**

### **8.01**

#### **Common Areas.**

The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the provisions of the Official Code of Georgia relating to nonprofit corporations, this Declaration, the Bylaws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Owners. As provided in Section 12.01 hereof, and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of fifteen (15) years after the date of the recording of this Declaration; or (ii) the surrender by Declarant, its successors and assigns, of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 8.01 and by Section 12.01 hereof.

## **8.02**

### **Duties and Powers.**

The duties and powers of the Association shall be those set forth in the provisions of the Official Code of Georgia relating to nonprofit corporations, this Declaration, the Bylaws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Official Code of Georgia, this Declaration, and the Bylaws, in that order, shall prevail, and each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance therefor, agrees to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall not be limited to, the power to purchase one or more Lots and/or Dwelling and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to Lots and Dwellings, to furnish trash collection, water, sewer, and/or security service for the Common Areas and/or the Lots and Dwellings. Notwithstanding the foregoing provisions of this Section 8.02 or any other provisions of this Declaration to the contrary, for so long as Declarant shall own any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

## **8.03**

### **Agreements.**

Subject to the prior approval of Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development; and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers or duties specifically and exclusively reserved to the directors, officers, or members of the Association by this Declaration or the Bylaws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the Bylaws, or the rules and regulations of the Association.

## **8.04**



### **Management Agreement.**

Greenbelt Management, Inc., or an affiliate, shall be employed as the manager of the Association and the Development for such period of time as Declarant has the right to appoint and remove officers and directors of the Association, with the option on the part of Greenbelt Management, Inc., or its affiliate, to renew such employment for two (2) successive one-year terms from and after the termination of such appointment and removal right. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, shall be deemed to ratify such management agreement.

### **8.05**

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

The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association shall not, in any circumstances, be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot or Dwelling also transfers the membership in the Association which is an appurtenance to such Lot or Dwelling.

### **8.06**

#### **Rules and Regulations.**

As provided in Article XI hereof, the Association through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Lots, Dwellings and Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

### **8.07**

#### **Indemnification.**

The Association shall indemnify every officer and director of the Association against any and all expenses, including court costs and reasonable attorneys' fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the Board of Directors) to which he or she may be made a party by reason of being or having been an officer or director at the time such expenses are incurred. The officers and directors shall not be liable for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or nonfeasance. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association) and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein, shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

## **ARTICLE IX ASSESSMENTS**

### **9.01**

#### **Purpose of Assessments.**

The assessments for Common Expenses provided for herein shall be used for the general purposes of

promoting recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development and maintaining the Development and improvements therein, all as may be more specifically authorized by the Board of Directors.

## **9.02**

### **Creation of Lien and Personal Obligation of Assessments.**

Each Owner of a Dwelling by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance as well as any Occupant who resides at the Dwelling, is deemed to covenant and agree to pay to the Association: (a) annual assessments, such assessments to be established and collected as provided in Section 9.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 9.04 hereof, (c) individual or specific assessments against any particular Dwelling which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such Dwelling in accordance with Article XI hereof. Any such assessments, together with late charges, simple interest at the rate of eighteen percent (18%) per annum, and court costs and attorneys' fees incurred to enforce or collect such assessments, shall be an equitable charge and a continuing lien upon the Dwelling, the Owner of which is responsible for payment. Each Owner shall be personally liable for assessments coming due while he or she is the Owner of a Dwelling, and his or her grantee shall take title to such Dwelling, subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid assessments shall not apply to the holder of any first priority institutional Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, who takes title to a Dwelling through foreclosure, or to any purchaser of such Dwelling at such foreclosure sale. In the event of co-ownership of any Dwelling, all such co-Owners shall be jointly and severally liable for the entire amount of such assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors.

## **9.03**

### **Computation and Annual Assessments.**

It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expense during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The Board shall cause the budget and the proposed total of the annual assessments to be levied against the Dwellings for the following year to be delivered to each Owner at least fifteen (15) days prior to such annual meeting. The total annual assessments shall be divided among the Dwellings so that each Dwelling shall be subject to equal annual assessments. Upon the addition of Additional Property to the Development, assessments shall continue to be equal, and the assessments against those Dwellings being added to the Development shall therewith be equal to those imposed upon the Dwellings theretofore assessed. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the Owners, to include Common Expenses and assessments related to such additional Dwellings. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association, or (ii) a vote of the majority of the votes of the Owners who are voting in person or by proxy at such meeting. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessments in effect for the then current year shall be increased in proportion to the percentage increase, if any, for the then current year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items 1967-69=100), or its successor index, and

such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 9.04 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

- (i) management fees and expenses of administration, including legal and accounting fees;
- (ii) utility charges for utilities serving the Common Areas and charges for other common services for the Development, including trash collection and security services, if any such services or charges are provided or paid by the Association;
- (iii) the cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;
- (iv) the expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration;
- (v) the expenses of maintenance, operation, and repair of other amenities and facilities serving the Development, the maintenance, operation and repair of which the Board from time to time determines to be in the best interest of the Association;
- (vi) the expenses of the Architectural Standards Committee which are not defrayed by plan review charges;
- (vii) ad valorem real and personal property taxes assessed and levied against the Common Areas;
- (viii) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, tenants, guests, and invitees;
- (ix) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and
- (x) the establishment and maintenance of a reasonable reserve fund or funds (A) for inspections, maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be inspected, maintained, repaired, or replaced on a periodic basis, (B) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (C) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.
- (xi) The association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the annual assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the



Association and the effectuation of its purposes.

#### **9.04**

##### **Special Assessments.**

In addition to the annual assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that except as otherwise permitted in Sections 6.02 and 7.01 hereof, any such assessment shall be approved by (i) Declarant, for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add Additional Property to the development, and (ii) by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.07 hereof. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots and Dwellings equally as provided with respect to annual assessments.

#### **9.05**

##### **Individual Assessments.**

Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests, or invitees of any Owner shall be specially assessed against such Owners and their respective Dwellings. The individual assessments provided for in this Section 9.05 shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be specified by the Board.

#### **9.06**

##### **Initiation Fee.**

In addition to the other assessments set forth in this Article IX, the Board of Directors of the Association and/or the Declarant may require the payment of initiation fees. Said initiation fee shall be payable only once by the Owner of a Dwelling and may be used in the Association's discretion for any purpose, including as reserve funds or for operating expenses.

#### **9.07**

##### **Notice of Meeting and Quorum.**

Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 9.03 and 9.04 hereof, shall be sent to all members not less than fifteen (15) days nor more than forty-five (45) days in advance of such meetings. Said notice shall be sent by the Association to the Owner of the Dwelling at the Property address, unless otherwise specified by the Owner. With respect to annual meetings, the presence of members or proxies entitled to cast over fifty percent (50%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the presence in person or by proxy of members having one-third (1/3) of the total votes of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Notwithstanding such reduced quorum requirement at a subsequent meeting, a minimum vote of fifty-one percent (51%) of all the votes of the Association shall be required to disapprove the Association's budget.

#### **9.08**

##### **Liens.**

All sums assessed against any Dwelling pursuant to this Declaration, together with court costs,

reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Dwelling in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Dwelling except only for (i) liens of ad valorem taxes, and (ii) liens for all sums unpaid on a first priority institutional Mortgage or on any Mortgage to Declarant, or its affiliates, successors, or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of assessments to the lien of such Mortgages shall only apply to such assessments which have become due and payable prior to a foreclosure. All other persons acquiring liens or encumbrances on any Dwelling after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

## **9.09**

### **Effect of Nonpayment; Remedies of the Association.**

Any assessments of an Owner or any portions thereof which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than thirty (30) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum. A lien and equitable charge as herein provided for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment shall include the late charge established by the Board of Directors, interest on the principal amount due at the rate of eighteen percent (18%) per annum, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts, and to foreclose its lien, or to bring any other action at law or in equity to collect the indebtedness. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Owner, by his or her acceptance of a deed or other conveyance to a Dwelling vests in the Association and its agents the right and power to bring all actions against him or her personally for the collection of such assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, his Dwelling, and an Owner shall remain personally liable for assessments, interest, and late charges which accrue prior to a sale, transfer, or other conveyance of his Dwelling. As an additional remedy, but in no way as a limitation on the other remedies set forth herein, if any assessment, interest, costs, or other charge is not paid as required in this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: to sell said lot, lots, dwelling or dwellings subject to the lien at auction, at the usual place for conducting sales at the courthouse in Fulton County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately proceeding such sale in the paper in which the Sheriff's advertisements for Fulton County, Georgia are published, and such notice, if any, as may be required at such time under O.C.G.A. § 44-14-162.2, or other applicable statute as then in effect, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or its assigns, may bid and purchase at such sale and thereon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the

happenings of the default upon which the execution or power of sale herein granted depends, and each owner hereby constitutes and appoints the association and its assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agreements that the recitals so to be made by the Association, or its assigns, shall be binding and conclusive upon the Owner whose property is the subject of such sale, and that the conveyance to be made by the Association or its assigns, shall be effectual to bar all equity of redemption in such owner, or the successors in interest of such Owner, in said lot, lots, dwelling or dwellings, and the Association or its assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interests thereon, costs and other charges due, together with all costs and expenses of sale and reasonable attorneys' fees, shall pay any excess to such owner, or the heirs or assigns of such owners provided by law. The power and agency herein granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law. Each Owner, by acceptance of a deed conveying a lot or dwelling unit subject to this Declaration, waives any right which owner may have under the Constitution or Laws of the State of Georgia or the Constitution or Laws of the United States of America to notice or to a judicial hearing prior to the exercise of any right or remedy provided by this Declaration, and owner waives Owner's rights, if any, to set aside or invalidate any sale duly consummated in accordance with the provisions of this Declaration on the ground that the sale was consummated without a prior judicial hearing.

#### **9.10**

##### **Certificate.**

The Treasurer, any Assistant Treasurer, or the manager of the Association shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate in writing signed by said Treasurer, Assistant Treasurer, or manager setting forth whether the assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate shall be conclusive evidence of payment of any assessments stated therein to have been paid.

#### **9.11**

##### **Date of commencement of Annual Assessments.**

The annual assessments provided for herein shall commence as to each Dwelling on the day on which such Dwelling is conveyed to a person other than Declarant or a builder who is not an occupant and shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual assessments and any outstanding special assessments shall be adjusted for such Dwelling according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Dwelling is first conveyed. Annual and special assessments for Dwellings in portions of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Dwelling on the later of (i) the day on which such Dwelling is conveyed to a person other than Declarant or a builder or who is not an occupant (ii) the day of the recording of the plat so submitting such parcels, and annual and special assessments for each such Dwelling shall be adjusted according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such assessments commence. Anything contained herein to the contrary notwithstanding, Declarant shall not be responsible for the payment of annual or special assessments on Dwellings which it or its affiliates own and which are not occupied residences (except as hereinafter provided). Declarant covenants and agrees to pay annual and special assessments for each Dwelling owned by Declarant or an affiliate which is an occupied residence. Furthermore, Declarant shall have the option, but not the responsibility, to either pay annual assessments on Lots owned by Declarant or fund any deficit

which may exist between assessments and the annual operating budget of the Association for so long as Declarant has the authority hereunder to appoint and remove directors of the Association, provided, however, that the budget, assessments, and deficit, if any, shall be annually reviewed by Declarant and the Board of Directors, and during such period Declarant's option to fund deficits shall only be up to the amount of the Association's operating budget, excluding reserves. Upon Declarant no longer having the authority to appoint directors or officers of the Association, Declarant shall be obligated only to pay assessments on Dwellings owned by Declarant.

## **ARTICLE X**

### **ARCHITECTURAL STANDARDS AND USE RESTRICTIONS**

#### **10.01**

##### **Purpose.**

In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Property, the Lots, Dwellings, and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article X. Every grantee of any interest in the property, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article X.

#### **10.02**

##### **Architectural Standards Committee.**

The Board of Directors shall establish the Architectural Standards Committee which shall consist of up to five (5) (but not less than three (3)) members, all of whom shall be Owners and who may or may not be members of the Board of Directors, provided that prior to the termination of Declarant's right to appoint and remove officers and directors of the Association, such members do not have to be Owners. The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the Architectural Standards Committee by the Board shall be subject to the prior approval of Declarant until that date which is one (1) year from and after the date on which Declarant's right to appoint and remove officers and directors of the Association is terminated. The Architectural Standards Committee shall elect a chairman and he or she, or in his or her absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Standards Committee shall meet at least once in each calendar month, as well as upon call of the chairman, and all meetings shall be held at such places as may be designated by the chairman. Three (3) members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or a proxy at a meeting of the Architectural Standards Committee shall constitute the action of the Architectural Standards Committee on any manner before it. The Architectural Standards Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Standards Committee in performing its functions set forth herein. Each member of the Architectural Standards Committee may be paid a stipend or honorarium as from time to time determined by the Board.

### **10.03 Permitted Improvements: Standards.**

- (a) No improvements of any nature whatsoever shall be constructed, altered, added to, or maintained upon any part of the Property, except i) for Dwellings and other improvements which are constructed by Declarant, including, but not limited to, Declarant's option to further subdivide and develop the remaining parcels of the Property not heretofore developed and subdivided, it being provided, however, that once said parcels are developed, that any improvements contemplated thereon shall be subject to this Article X, (ii) such improvements as are approved by the Architectural Standards Committee in accordance with this Article X, or (iii) improvements which pursuant to this Article X do not require the consent of the Architectural Standards Committee.
- (b) The Architectural Standards Committee is hereby authorized to promulgate from time to time written architectural standards, policies, and guidelines (hereinafter the "Standards") governing the construction, location, landscaping, and design of improvements, the contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to Sections 10.05, 10.06, and 10.08 hereof. Any such Standards published by the Architectural Standards Committee shall be binding and enforceable on all Owners with respect to all improvements in the Development requiring the approval of the Architectural Standards Committee.

### **10.04**

#### **Construction of Improvements.**

- (a) No construction of improvements on any Lots or Dwellings shall be undertaken or conducted on Sundays, except for (i) construction activities of Declarant, (ii) emergency situations involving the potential loss, injury, or damage to persons or property, and (iii) as otherwise permitted by the Architectural Standards Committee.
- (b) Dwellings may not be temporarily or permanently occupied until the exteriors thereof and the landscaping of the Lot on which the Dwelling is located have been completed and a certificate of occupancy for such Dwelling has been issued. No temporary house, shack, tent, barn, or other outbuilding shall be permitted on any Lot or Dwelling at any time, except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board, nor shall any stable, poultry house or yard, rabbit hut, or other similar yard structure be constructed or allowed to remain on any Lot or Dwelling. Construction of all Dwellings shall be completed within one (1) year of the commencement date of said construction. During the continuance of construction by an Owner, such owner shall require its contractors to maintain the lot or dwelling in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Furthermore, as provided in Section 5.03 of this Declaration, should a Builder cease to continue work on a Dwelling for greater than thirty (30) days, then Declarant and/or the Board of Directors of the Association shall have the right, but not the obligation, to complete the exterior of the Dwelling in conformance with the Standards established by the Architectural Standards Committee. Costs for completing the work shall be charged to the Builder, and, if not paid by the Builder, shall become a lien against the Lot or Dwelling. Upon completion of construction, such Owner shall cause its contractors to immediately remove all equipment, tools, and construction material and debris from the Lot or Dwelling on which such construction has been completed.



## 10.05

### **Architectural Approval.**

To preserve the architectural and aesthetic appearance of the Development, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner other than Declarant, with respect to the construction or affecting the exterior appearance of any Dwelling or with respect to any other portion of the Property, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Architectural Standards Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot or Dwelling) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Standards Committee as to the compliance of such plans and specifications with such Standards as may be published by the Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Standard Committee, and the other copy shall return to the Owner marked "approved," "approved as noted," or "disapproved." The Architectural Standards Committee may establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his Dwelling that do not affect the exterior appearance without the necessity of approval or review by the Architectural Standards Committee.

The Architectural Standards Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. In connection with approval rights and to prevent excessive drainage or surface water run-off and in order to comply with any restrictions imposed from time to time on the Development or portions thereof, by the Atlanta Regional Commission, the Architectural Standards Committee shall have the right to establish a maximum percentage of a Lot or Dwelling which can be cleared or graded and a maximum percentage of a Lot or Dwelling which may be covered by Dwellings, buildings, structures, or other improvements, which standards shall be promulgated on the basis of topography, percolation rate of the soil, soil types and conditions, vegetation cover, and other environmental factors. Following approval of any plans and specifications by the Architectural Standards Committee, representatives of the Architectural Standards Committee shall have the right during reasonable hours to enter upon and inspect any Lot or Dwelling or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Architectural Standards Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural standards Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the Architectural Standards Committee fails to approve or disapprove in writing any proposed plans and specifications within thirty (30) days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with the scheme of the Development as set forth in this Declaration. Upon approval of plans and specifications, no further approval under this Article X shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of

the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the Architectural Standards Committee upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

## **10.06**

### **Landscaping Approval.**

To preserve the aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner other than Declarant, unless and until the plans therefor have been submitted to and approved in writing by the Architectural Standards Committee. The provisions of Section 10.5 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, et cetera shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans shall include a calculation of the ratio of the area to be covered by grass lawns versus the area to be left in a natural state, and the Architectural Standards Committee shall be entitled to promulgate standards with respect to such ratios. Furthermore, no hedge or shrubbery planting or tree which obstructs sight-lines of streets and roadways within the Development shall be placed or permitted to remain on any Lot or Dwelling where such hedge, shrubbery, or tree interferes with traffic sight-lines, including sight-lines at the intersection of a driveway and a road or street in the Development. Unless located within ten (10) feet of a building or a recreational parking facility, no Owner other than Declarant, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four (4) feet above ground level, without obtaining the prior approval of the Architectural Standards Committee, except as set forth in the preceding sentence and provided further that dead or diseased trees which are inspected and certified as dead or diseased by the Architectural Standards Committee or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any Lot or Dwelling. All of the landscaping of Lots and Dwellings must be completed prior to occupancy of the Dwelling.

## **10.07**

### **Approval Not a Guarantee.**

No approval of plans and specifications and no publication of Standards shall be construed as representing or implying that such plans, specifications, or Standards will, if followed, result in properly designed improvements. Such approvals and Standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the Architectural Standards Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article X, any loss or damages to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor by defects in construction undertaken pursuant to such plans and specifications.

## **10.08**

### **Building Restrictions.**

All Dwellings and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions and any applicable regulations and restrictions of the Atlanta Regional Commission. All grading, clearing, construction or impervious surfaces, building, and other construction activity performed on Lots or Dwellings that are subject to the rules, regulations, guidelines, or restrictions of the Atlanta Regional Commission shall be performed in accordance with

(i) such rules, regulations, guidelines and restrictions, (ii) any plat filed with Fulton County, Georgia or the Atlanta Regional Commission, and (iii) the Standards promulgated by the Architectural Standards Committee and the square footage of impervious surface and cleared land on any Lot or Dwelling shall not exceed the square footage of such impervious surface or cleared land, as the case may be, allocated to such Lot or Dwelling by the Architectural Standards Committee or the Atlanta Regional Commission, which allocated amount has been previously fixed and determined. Prior to any such grading, clearing, construction activity, the Owner of any Lot or Dwelling which is subject to such rules, regulations, guidelines or restrictions shall make such filings, including, without limitation, the filing of a site plan with Fulton County, Georgia, and obtain such authorizations and permits as are required thereunder, and, further, shall receive the prior written approval of the Architectural Standards Committee. Any Owner that performs any grading, clearing, construction of impervious surface, or other construction activity in violation of the above or the rules, regulations, guidelines or restrictions of the Atlanta Regional Commission, or otherwise violates such rules, regulations, guidelines, or restrictions, shall be liable to Declarant for any damages incurred by Declarant arising out of such violation; and Declarant hereby expressly reserves the right to sue any such Owner for monetary damages and for specific performance of the above covenants and restrictions. In addition, the Architectural Standards Committee is authorized to promulgate as part of the Standards described in 10.03(b) hereof additional restrictions applicable to the Development, including, without limitation, restrictions relating to height of improvements above grade, roof pitch, and minimum square footage of living space in each Dwelling. No exterior portion of any building, structure, or other improvement (excepting sidewalks and driveways) located on or with respect to the applicable setback line restrictions as set forth in the Standards. To assure that Dwellings and other structures will be located so that the maximum view, privacy, and breeze will be available to each Dwelling or structure, Dwellings and structures will be located with regard to the topography of each Lot or Dwelling, taking into consideration the location of trees and vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other Dwellings or structures within the Development. In addition, all residential structures constructed on a Lot shall: (i) have as a minimum first floor elevation the level of the 100-year flood plain as designated on official Fulton County flood plain maps, on file with Fulton County Planning Department, and (ii) be designed and constructed in compliance with the requirements of the Fulton County Building Code related to construction in flood hazard areas, if any are applicable.

## **10.09**

### **Service Yards.**

Each Owner of a Lot or Dwelling shall provide visually screened areas to serve as service yards in which garbage receptacles, fuel tanks, wood piles, gas and electric meters, supplies, equipment, and vehicles, materials, supplies, and equipment which are stored outside by Owners must be placed or stored in order to conceal them from view from roads and adjacent properties. Any such visual barrier shall be at least six (6) feet high and may consist of either fencing or landscaping and planting which is approved by the Architectural Standards Committee in accordance with the terms of this Article X.

## **10.10**

### **Use of Lots and Dwellings.**

Except as permitted by Sections 3.10 and 10.20 hereof, each Lot and Dwelling shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. No more than one (1) Dwelling shall be located on any Lot. The use of a portion of a Dwelling as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic. The entertainment, or the enjoyment or business of the owner's employees, directors, agents, clients, or customers shall not be considered to be a violation



of this covenant if such use does not create regular customer, client or employee traffic. Lease or rental of a Dwelling for residential purposes shall also not be considered to be a violation of this covenant so long as the lease (i) is not for less than the entire Dwelling and all the improvements thereon, (ii) is for a term of at least six (6) months, and (iii) is otherwise in compliance with rules and regulations as may be promulgated and published from time to time by the Board of Directors. All leases shall be required to be in writing, and, prior to the commencement of any such lease, the Owner shall provide the Secretary of the Association and the managing agent of the Association, if any, with copies of such lease. Any lessee or tenant shall be personally liable and in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder. Notwithstanding any provision in this Section 10.10 to the contrary, Declarant, its successors or assigns, if the right is so transferred by Declarant, shall have the perpetual right to designate in writing to the Association Dwellings in the Development which may be leased for such period of time as Declarant shall determine, including daily and weekly rentals, and for these Dwellings, Declarant or the Owner shall not be required to supply copies of the leases therefor to the Association.

#### **10.11**

##### **Exterior Appearance.**

No chain link fences shall be permitted within the Development, except those fences erected by Declarant. Furthermore, no foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or other purpose, nor shall any window-mounted heating or air conditioning units be permitted. Except within screened service yards, outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed, or maintained, nor shall any clothing, rugs, or other items be hung on any railing, fence, hedge, or wall. When not in use, all garage doors shall be kept closed. No projections of any type shall be placed or permitted to remain above the roofs of any improvements except approved chimneys or vent stacks.

#### **10.12**

##### **Signs.**

- (a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the Architectural Standards Committee's prior written approval of plans and specifications, be installed, altered or maintained on any Lot, except:
  - (i) such signs as may be required by legal proceedings;
  - (ii) not more than one "For Sale" or "For Rent" sign; provided, however, that in no event shall any such sign be larger than three square feet in area;
  - (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Standards Committee;
  - (iv) such signs as are used to identify and advertise the Property; and
  - (v) a sign indicating the builder of the residence on the Lot.
- (b) Following the consummation of the sale or lease of any Lot or Dwelling, the "For Sale" or "For Rent" sign shall be removed immediately.
- (c) Notwithstanding the foregoing, the restrictions of this Section 10.12 shall not apply to Declarant. In addition, the Board of Directors on behalf of the Association, shall have the right

to erect reasonable and appropriate signs on any portion of the Common Areas and within these easement areas established in Section 3.08 thereof.

### **10.13**

#### **Antennas.**

No television antenna, radio receiver, satellite dish, or other similar device shall be attached to or installed on any portion of the Development, unless contained entirely within the interior of a building or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot or Dwelling, which may unreasonably interfere with the reception of television or radio signals within the Development. Provided, however, that Declarant and the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Development and should cable television services be unavailable and adequate television reception not be otherwise available, then an Owner may make written application to the Architectural Standards Committee for permission to install a television antenna.

### **10.14**

#### **Water Wells and Septic Tanks.**

No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot or Dwelling, except for wells maintained solely for irrigation purposes. All such irrigation wells must receive the prior written approval of the Architectural Standards Committee.

### **10.15**

#### **Pets.**

No animals, livestock, birds, or poultry of any kind shall be raised, bred, or kept by any Owner upon any portion of the Development, except that generally recognized house pets may be kept in Dwellings, subject to rules and regulations adopted by the Association, through its Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Areas. Pets shall be under leash at all times when walked or exercised in any portion of the Common Areas, and no pet shall be permitted to leave its excrement on any portion of the Common Areas, and the Owner of such pet shall immediately remove the same. Upon the written request of any Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 10.15, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Development if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors shall have the further right, subject to Section 11.03 hereof, to fine any Owner (in an amount not to exceed fifty dollars (\$50.00) per violation) for the violation of these pet restrictions by such Owner or an occupant of his or her lot or Dwelling, and an Owner shall be liable to the Association for the cost of repair of any damage to the Common Areas caused by the pet of such Owner or of an occupant of such Owner's Lot or Dwelling. Any such fine or cost of repair shall be added to and become a part of that portion of any assessment next coming due to which such Lot or Dwelling and its Owner are subject.

### **10.16**

#### **Nuisances.**

No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion

of the Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Development. Noxious or offensive activities shall not be carried on in any Lot or Dwelling or in any part of the Common Areas, and each Owner, his family, tenants, guests, invitees, servants, and agents shall refrain from any act or use of a Lot or Dwelling or of the Common Areas which could cause disorderly, unsightly, or unkempt conditions, or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Development. Any Owner, or his or her family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Development, shall be liable to the Association for the actual costs of removal thereof or the sum of one-hundred fifty dollars (\$150.00), whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his or her Lot or Dwelling are subject.

#### **10.17**

##### **Motor Vehicles, Trailers, Boats, Etc.**

Each Owner shall provide for parking of at least two (2) automobiles in garages, equipped with garage doors, prior to occupancy of the Dwellings owned or maintained by such Owner. All automobiles owned or used by Owners or Occupants other than temporary guests and visitors shall be parked in garages to the extent that garage space is available, and garages shall not be used for storage or otherwise so that they become unavailable for parking cars therein. The Board of Directors of the Association shall have the authority to promulgate rules and regulations to govern or prohibit the outside storage or parking upon any Lots or Dwelling or within any portion of the Common Area (other than areas provided therefor within the Common Areas, if any) of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices. Furthermore, although not expressly prohibited hereby, the Board of Directors may at time prohibit mobile homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other similar vehicles, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Development, if, in the opinion of the Board of Directors, such prohibition shall be in the best interests of the Development. No Owners or other occupants of any portion of the Development shall repair or restore any vehicle of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs and then only to the extent necessary to enable the movement thereof to a proper repair facility. Declarant hereby reserves the right (without any obligation to do so) to designate a portion of the Common Areas as a parking area for boat trailers, motor homes, and similar vehicles.

#### **10.18**

##### **Sales and Construction Activities.**

Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the developing of Lots, Dwellings, Common Areas, and Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved by Declarant provided that the location of any construction trailers of any assignees of Declarant's rights

under this Section 10.18 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and for related activities, including the use of any recreation areas and their facilities.

#### **10.19**

##### **Multiple Ownership.**

No Lots or Dwellings may be sold under any time-sharing, time-interval, or similar right-to-use programs.

#### **10.20**

##### **Traffic Regulations.**

All vehicular traffic on the streets and roads in the Development shall be subject to the provisions of the laws of the State of Georgia and Fulton County concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets, within the Development. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Georgia and Fulton County and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers licensed to operate motor vehicles by the State of Georgia or by any other state in the United States may operate any type of motor vehicle.

#### **10.21**

##### **Garage Sales.**

All garage sales shall be conducted in accordance with applicable law and such rules and regulations as the Board may establish from time to time concerning same.

#### **10.22**

##### **Construction of Improvements.**

Construction of all dwellings on a Lot shall be completed within one (1) year of the commencement date of said construction. If any Dwelling on a Lot is not completed within one (1) year of the commencement date of said construction, the Association, its employees and agents, shall have the right, but not the obligation, to enter upon said Lot and to take such action as is necessary to complete construction of said Dwelling, with the costs thereof being assessed against the Builder or Owner of such Lot. Such Builder or Owner shall be personally liable to the Association for the direct and indirect costs of completion of said Dwelling, and the liability for such costs shall constitute an equitable charge and the same manner as other liens for the improvement of real property or by any other appropriate proceeding in law or in equity. The Association shall give notice to the Builder or Owner of such Lot prior to commencing any work.

#### **10.23**

##### **Zoning and Private Restrictions.**

None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions, and easements created or imposed by this Declaration, the more restrictive provisions shall govern and control.

## **10.24**

### **Repurchase Option.**

Subject to the provisions of Section 12.06 hereof, Declarant hereby reserves unto itself and its successors and assigns the right and option to purchase any Lot within the Development which is offered for sale by the owner thereof, such option to be at the price and on the terms and conditions of any *bona fide* offer for such Lot which is acceptable to such Owner and which is made to such owner by a third party (or any offer made by such Owner that is acceptable to a third party). Upon the receipt or making of any such offer by an Owner, such Owner shall promptly submit a copy of the same to Declarant, and Declarant shall have a period of seven (7) days from and after Declarant's actual receipt of such copy from such Owner in which to exercise its purchase option by giving such Owner written notice of such exercise. If Declarant declines to exercise such option, Declarant shall execute an instrument evidencing its waiver of its purchase option, which instrument shall be in recordable form. In the event that Declarant does not exercise its purchase option, and such sale to a third party is not consummated on such terms within six (6) months of the date in which the offer is transmitted to Declarant, the terms and limitations of this Section 10.24 shall again be imposed upon any sale by such Owner. If Declarant shall elect to purchase such Lot this transaction shall be consummated within sixty (60) days following delivery of written notice by Declarant to such Owner of Declarant's decision to so purchase such Lot.

## **ARTICLE XI RULE MAKING**

## **11.01**

### **Rules and Regulations.**

Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, and the Common Areas and facilities located thereon. In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations which shall govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation be specifically overruled, cancelled, or modified by the Board of Directors or in a regular or special meeting of the Association by vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property to the Development.

## **11.02**

### **Authority and Enforcement.**

Subject to the provisions of Section 11.03 hereof, upon the violation of this Declaration, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay and assessments, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners or Occupants of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any recreational facilities located in the Common Areas, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in

the event of such a violation by such Owner, his family, guests, or tenants or by his co-Owners or the family, guests, or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.

### **11.03**

#### **Procedure.**

Except with respect to the failure of an Owner to pay assessments, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other occupant of the Development for violations of the Declaration, the Bylaws, or any rules and regulations of the Association, unless and until the following procedure is followed:

- (a) Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:
  - (i) The alleged violation;
  - (ii) The action required to abate the violation; and
  - (iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.
  
- (b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in Executive session. The notice shall contain:
  - (i) The nature of the alleged violation;
  - (ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;
  - (iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and
  - (iv) The proposed sanction to be imposed.
  
- (c) The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard 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 other individual who delivers such notice. In addition, the notice requirement shall be deemed satisfied if an alleged violator 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.



## **ARTICLE XII**

### **GENERAL PROVISIONS**

#### **12.01**

##### **Control by Declarant.**

NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BYLAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association as provided by and for the term set forth in Section 8.01 hereof. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 8.01. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 8.01 and this Section 12.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Director, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

#### **12.02**

##### **Amendments by Declarant.**

During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Records of the Office of the Clerk of the Superior Court of Fulton County, Georgia, without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any Additional Property to the terms of this Declaration, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot or Dwelling, or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot or Dwelling, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereof by all of such Mortgagees so affected. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to submit Additional Property to the provisions of this Declaration as provided in Section 2.02 hereof. Any amendment made pursuant to this Section 12.02 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, agrees to be bound by such amendments as are permitted by this Section 12.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development:

- (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect

to any Lot or Dwelling subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot, Dwelling, or other improvements subject to this Declaration, or (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots, Dwellings, or other improvements subject to this Declaration.

### **12.03**

#### **Amendments by Association.**

Amendments to this Declaration, other than those authorized by Section 12.02 hereof, shall be proposed and opted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by Owners holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee, and (ii) during any period in which Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option under this Declaration to add Additional Property to the Development, such amendment must be approved by Declarant.
- (c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

### **12.04**

#### **Enforcement.**

Each Owner shall comply strictly with the Bylaws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his or her Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the recreational facilities, located in the Common Areas, or for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the Bylaws, and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that



any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of Declarant, the Association, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power, or violation or breach occurring prior or subsequent thereof, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the Bylaws, or any rules and regulations of the Association, however long continued.

## **12.05**

### **Duration.**

The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of twenty (20) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of the initial twenty (20) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Records of the Clerk of the Superior Court of Fulton County, Georgia, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

## **12.06**

### **Perpetuities.**

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.

## **12.07**

### **Interpretation.**

In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record on the Records of the Clerk of the Superior Court

of Fulton County, Georgia. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Georgia.

## **12.8**

### **Gender and Grammar.**

The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men, or women, shall in all cases be assumed as though in each case fully expressed.

## **12.09**

### **Severability.**

Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

## **12.10**

### **Rights of Third Parties.**

This Declaration shall be recorded for the benefit of Declarant, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title, or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

## **12.11**

### **Notice of Sale, Lease, or Mortgage.**

In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

## **12.12**

### **No Trespass.**

Whenever the Association, Declarant, the Architectural Standards Committee, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

## **12.13**

### **Notices.**

Notices required hereunder shall be in writing and shall be delivered by hand or sent by mail via the United States Postal Service, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots or Dwellings. All notices to the Association shall be

delivered or sent in care of Declarant at the following address:

**BROOKS HORTON DEVELOPMENT CORPORATION OF GEORGIA  
6251 SMITH POINTE DRIVE  
NORCROSS, GEORGIA 30092**

or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant at the above address or to such other address as Declarant may notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

IN WITNESS WHEREOF, duly authorized officers of the undersigned Declarant have executed this Declaration under seal, as of the day and year first above written.

DECLARANT:

Signed, sealed and delivered  
in the presence of:

BROOK HORTON DEVELOPMENT  
CORPORATION OF GEORGIA,  
a Georgia Corporation

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

BY: \_\_\_\_\_  
( Name: Kenneth G. Horton )  
( Title: President )

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

ATTEST: \_\_\_\_\_  
( Name: Jeanine C. Goddard )  
( Title: Sec )

[NOTARIAL SEAL]

Commission Expiration Date : \_\_\_\_\_

[CORPORATE SEAL]

11-Q-31630\001\Declarat  
9-20-91

**EXHIBIT "A"**

BEGINNING At an iron pin found at the corner common to Land Lots 180, 181, 210 and 211 said District and Section said iron pin also being located at the northeasterly corner of property now or formerly owned by J. Russell Welch and Rhonda L. Welch (Deed Book 7947, page 43, Fulton County, Georgia records); running thence south 89 degrees 44 minutes 44 seconds west along the southerly line of Land Lot 181 (said Land Lot line being contiguous with the northerly line of said welch property), a distance of 200.00 feet to an iron pin found at the northeasterly corner of property now or formerly owned by Dossie M. Shackelford (Deed Book 7993, page 367, aforesaid records); running thence north 81 degrees 20 minutes 50 seconds west along the northerly line of said Shackelford property, a distance of 195.23 feet to an iron pin found at the northeasterly corner of property now or formerly owned by Gerald M. Betterton (Deed Book 7940, page 388, aforesaid records); running thence north 52 degrees 40 minutes 12 seconds west along the northeasterly line of said Betterton property, a distance of 299.93 feet to an iron pin found at the northwesterly corner of said Betterton property; running thence southwesterly along the northwesterly line of said Betterton property, the following courses and distances: south 37 degrees 19 minutes 48 seconds west, a distance of 320.40 feet to a point; south 23 degrees 17 minutes 37 seconds west, a distance of 51.85 feet to a point; south 37 degrees 19 minutes 48 seconds west, a distance of 40.00 feet to a point; and, along the arc of a curve to the left (said arc having a radius of 20.00 feet), an arc distance of 31.42 feet to a point located on the northeasterly right

of way line of Buice Road (60 foot right of way); running thence northwesterly along the northeasterly right of way line Buice Road, the following courses and distances; north 52 degrees 40 minutes 12 seconds west, a distance of 20.00 feet to a point; north 53 degrees 00 minutes 17 seconds west, a distance of 26.65 feet to a point; north 55 degrees 43 minutes 55 seconds west, a distance of 53.41 feet to a point; north 59 degrees 05 minutes 35 seconds west, a distance of 60.49 feet to a point; north 51 degrees 19 minutes 43 seconds west, a distance of 51.97 feet to a point; north 52 degrees 35 minutes 56 seconds west, a distance of 50.60 feet to a point; and north 65 degrees 12 minutes 50 seconds west, a distance of 75.51 feet to a point located at the southeasterly corner of property now or formerly owned by Daniel J. Oakley (Deed Book 7980, page 71 aforesaid records); thence leaving the northeasterly right of line of Buice Road and running north 26 degrees 16 minutes 53 seconds east along the southeasterly line of said Oakley property, a distance of 391.17 feet to iron pin found at the northeasterly corner of said Oakley property; running thence north 68 degrees 25 minutes 46 seconds west along the northeasterly line of said Oakley property, a distance of 438.07 feet to an iron pin found on the westerly line of Land Lot 181 (said Land Lot line also being the easterly margin of a 120 foot Georgia Power Company right of way); running thence north 00 degrees 29 minutes 56 seconds west along the westerly line of Land Lot 181 and the easterly margin of said Georgia Power Company right of way, a distance of 854.60 feet to an iron pin found at the corner common to Land Lots 174, 175, 161 and 182 said District and Section (said iron pin also being located at the southwesterly corner of Lot 47, Block A, Phase I, Farmbrook Estates Subdivision, as per plat thereof recorded in Plat Book 161, Page 5, aforesaid records); running thence south 85 degrees 50 minutes 35 seconds east along the southerly lines of Lots 47, 48, 49 and 50 said block, phase, subdivision and plat, a distance of 1378.90 feet to an iron pin found on the easterly line of Land Lot 181; running thence south 00 degrees, 00 minutes 21 seconds east along the easterly line of Land Lot 181, a distance of 928.76 feet to an axle found, running thence south 4 degrees 43 minutes 4d seconds east along the easterly line of Land Lot 181, a distance of 449.38 feet to the iron pin found at the corner common to Land Lots 180, 181, 210 and 211, said District and Section, which iron pin marks the point of beginning and being a tract or parcel of land containing 37.894 sores, designated as Tract I, according to a plat of survey prepared for Singleton Properties, Inc. by E.S. Huff & Associates Land Surveyors, Inc., bearing the seal of Edward S. Huff. Georgia Registered Land Surveyor Number 1772, dated August 26, 1983.

## **EXHIBIT "B"** **PROPOSED RECREATION AREA - FOX GREER**

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 181, 1st District, 1st Section, Fulton County, Georgia, and being more particularly described as follows:

COMMENCE at the point formed by the intersection of the northeasterly right-of-way line of Fox Hunter Drive (a 50-foot right-of-way) and the northerly right-of-way line of Hunt Club Way (a 50-foot right-of-way); from said true point of beginning thus established, thence north 26 degrees, 30 minutes, 21 seconds west, along the northeasterly right-of-way line of Fox Hunter Drive, a distance of 50.62 feet to a point; thence continuing along the northeasterly right-of-way line of Fox Hunter Drive an arc distance of 160.81 feet (having a radius of 229.63 feet) (said arc being subtended by a chord having a bearing of north 46 degrees, 34 minutes, 06 seconds west, a chord distance of 157.54 feet) to a point located at the intersection of the northeasterly right-of- way line of Fox Hunter Drive and the proposed easterly right-of- way line of a "proposed road"; thence along the proposed easterly right-of-way line of the "proposed road" north 22 degrees, 29 minutes, 39 seconds east, a distance 37.74 feet to a point; thence an arc distance of 108.97 feet (having a radius of 499.47 feet) (said arc being subtended by a chord bearing north 15 degrees, 14 minutes, 39 seconds east, a chord distance of 108.75 feet) to a point; thence north 09 degrees, 59 minutes, 39 seconds east, a distance of 65.72 feet to a point; thence south

45 degrees, 02 minutes, 10 seconds east, a distance of 30.56 feet to a point; thence south 81 degrees, 22 minutes, 22 seconds east, a distance of 155.0 feet to a point located on the westerly boundary line of Lot 37, Fox Creek, Unit One; thence south 21 degrees, 18 minutes, 06 seconds east along the westerly boundaries of Lots 36 and 37, Fox Creek, Unit One, a distance of 132.21 feet to a point; thence south 83 degrees, 00 minutes, 21 seconds east, a distance of 100.0 feet to a point located on the westerly boundary of Lot 33, Fox Creek, Unit One; thence south 06 degrees, 59 minutes, 39 seconds west, a distance of 180.0 feet to a point located on the northerly right-of-way of Hunt Club Way; thence north 83 degrees, 00 minutes, 21 seconds west, along the aforementioned right-of-way line of Hunt Club Way, a distance of 112.88 feet to a point; thence an arc distance of 109.21 feet (having a radius of 229.63 feet) (said arc being subtended by a chord bearing south 83 degrees, 22 minutes, 10 seconds west, a chord distance of 108.18 feet) to the POINT OF BEGINNING; said property containing approximately 83,710 square feet (approximately 1.922 acres) (more or less), as shown on that certain survey for proposed Fox Creek recreation area prepared by G.M. Gillespie, Georgia Registered land Surveyor No. 2121 of Watts & Browning Engineers, dated September 12, 1991, as also generally delineated on the preliminary plat for Fox Creek (f/k/a Buice Road Tract) filed with and approved by Fulton County, Georgia.

ll-Q-31630\001\Exhibit.B 9-20-91

### **End of Covenants**

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FOX CREEK SUBDIVISION  
JOHNS CREEK, GEORGIA

**About Fox Creek**

Fox Creek Subdivision is located in an area previously known as part of the City of Alpharetta now known as Johns Creek. The 64 homes here were built in the early 1990s and share amenities to include a pool, cabana and tennis courts.

Fox Creek has gained a reputation as a friendly neighborhood of caring residents. Gatherings are planned throughout the year to celebrate holidays and the beginning and the end of the school year.

Fox Creek subdivision is included in the award winning Johns Creek High School cluster with State Bridge Crossing Elementary and Autrey Mill Middle as feeder schools.