

# **DECLARATION OF PROTECTIVE COVENANTS**

## **FOR**

### **THE HIGHLANDS AT CLEAR CREEK**

#### **Article I** **Definitions**

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

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

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration is the real property described in Exhibit "B", attached and made a part of this Declaration.

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

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

Section 1. Membership. Every Person who is the record owner of a fee interest in any Lot that is subject to this Declaration shall automatically be a member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws.

Membership shall go along with and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor more than one (1) office held for each Lot owned.

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

Section 3. Neighborhoods. Every Lot shall be located within the Subdivision Neighborhood, as indicated on the plats for the Community recorded or to be recorded in the Pickens or Gilmer County, Georgia records. Each Neighborhood shall elect a Neighborhood Committee, as described in Article V of the Bylaws, to represent the interests of Owners of Lots in such respective Neighborhoods.

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

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

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot and each Owner of any Unit, by acceptance of a deed to the Lot, whether or not stated in the deed, covenants and agrees to pay to

the Association: (a) common assessments or charges; (b) special assessments; (c) Neighborhood Assessments; and (d) specific assessments. All assessments, together with late charges, interest (not to exceed the maximum legal rate), costs, and reasonable attorney's fees actually incurred, shall be (a) a charge on the land and a continuing lien upon the Lot against which each assessment is made from the time the sums become due and payable; and (b) the personal obligation of every Person who is an Owner of the Lot at the time the assessment becomes due. The grantee of each Owner shall be jointly and severally liable for the portion of an assessment as is due and payable at the time of transfer of the Lot. However, the liability of a grantee for the unpaid assessments of an Owner shall not apply to any first Mortgage holder taking title through foreclosure proceedings or by deed in lieu of foreclosure, provided, however, any first mortgage holder who takes title through foreclosure proceedings or by deed in lieu of foreclosure shall be liable for all assessments due after the date of foreclosure.

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

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

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

The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted common expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other

sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. So long as the Declarant has the right unilaterally to annex additional property pursuant to Article X hereof, on an annual basis, the Declarant may elect, but shall not be obligated, to reduce the assessment for any fiscal year by payment of a subsidy. However, any Declarant subsidy shall be conspicuously disclosed as a line item in the income portion of the common expense budget. If the Declarant elects to pay a subsidy the amount of the subsidy shown on the budget shall be an estimate only and the Declarant shall be obligated to fund such subsidy only to the extent of any actual operating deficit. The payment of a subsidy in one year shall under no circumstances obligate the Declarant to continue payment of a subsidy in future years; provided, however, the Declarant shall be responsible for assessments to the extent required by Section 8 of this Article.

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

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

Section 4. Computation of Neighborhood Assessments. It shall be the duty of the Board, at least thirty (30) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated expenses benefiting the Owners of Lots within a Subdivision Neighborhood. The Board shall be entitled to set such budget to the extent that this Declaration, any Supplementary Declaration, or the Bylaws specifically authorize the Board to assess certain costs as a Neighborhood Assessment.

The budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within a Neighborhood, as appropriate. Neighborhood expenses shall be allocated equally among all Lots within a Neighborhood, and levied as a Neighborhood Assessment.

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

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

Section 5. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time to

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

Section 6. Lien for Assessments. All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of the Association from the time the sums become due and payable. The Association shall have the right, but not the obligation to evidence the existence of the lien by filing a notice of lien in the Pickens or Gilmer County, Georgia, records. The lien shall be superior to all other liens and encumbrances on the Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Pickens or Gilmer County, Georgia, records and all amounts advanced under the terms of and secured by the Mortgage.

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

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments of assessment which are not paid when due shall be delinquent. Any assessment or installment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine, which shall not exceed fifteen (15%) percent of the assessment payment. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. If the assessment is not paid when due, a lien shall attach and, in addition, the lien shall

include the late charge, interest at a rate not to exceed the highest rate allowed under Georgia law, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The existence of the lien may, but is not required to be, evidenced by the filing of a notice of lien in the Pickens or Gilmer County, Georgia, records. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot.

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

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

#### Section 8. Date of Commencement of Assessments.

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

commence on Lots containing occupied residences that are owned by Declarant or any builder or developer on the first day of the month following the occupancy of the residence located on the Lot.

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

Section 9. Specific Assessments. The Board shall have the power to specifically assess specific Lots pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XIII, Section 1, costs and expenses of self-help pursuant to Article XIII, Section 2 and the costs of maintenance performed by the Association which the Owner is responsible for under Article VII, Sections 1 and 2 shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association:

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

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

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

Section 1. Architectural Control Committee. No exterior construction, addition, erection, or alteration shall be made upon any part of the Community unless and until plans and specifications showing at least the nature, kind, shape, height,



materials, and location shall have been submitted in writing to and approved by an Architectural Control Committee ("ACC"). Reasonable seasonal decorative lights may be displayed between Thanksgiving and January 15<sup>th</sup>. Additionally, no approval shall be required for any construction, alteration or addition made by the Declarant. The Board of Directors may divide the ACC into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. Until one hundred (100%) percent of the Community has been developed and conveyed to purchasers in the normal course of development and sale, the Declarant shall have the right to appoint all members of the ACC, including all members of the new construction and modifications subcommittees, if the ACC is divided into subcommittees. In the event of a conflict between the two (2) subcommittees, the decision of the new construction subcommittee shall control. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. After the Declarant's right to appoint has expired, the Board of Directors shall appoint the members of the ACC, or may adopt a resolution making the Board of Directors the ACC. The Board may employ for the ACC architects, engineers, or other Persons necessary to enable the ACC to perform its review. The ACC may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, who shall have full authority to act on behalf of the Committee for all matters delegated. The ACC may, in its discretion, from time to time establish, abolish or amend standards to govern the development of Lots and the design and construction of improvements to a Lot and/or a Unit. The text of such standards and amendments shall be available to each Owner. Such standards shall be binding upon all Owners. A review fee in a reasonable amount may be charged.

Section 2. Guidelines and Procedures. The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all construction activities within the Community. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which vary from one portion of the Community to another depending upon the location, unique characteristics, and intended use.

The ACC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them from time to time, without the consent of the Owners.

The ACC shall make the Design Guidelines available to Owners, builders, and developers who seek to engage in development of or construction upon all of any portion of the Community and all such Persons shall conduct their activities in strict accordance with such Design Guidelines. In the discretion of the Declarant, such Design Guidelines may be recorded in the Pickens or Gilmer County, Georgia records, in which event the recorded version, as it may unilaterally be amended from time to time by the ACC by recordation of amendments thereto, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

Any amendments to the Design Guidelines adopted from time to time by the ACC in accordance with this Section shall apply to construction and modifications approved after the date of such amendment only, and shall not apply to plans or specifications previously approved or require modifications to or removal of structures previously approved by the ACC.

In the event that the ACC fails to approve or to disapprove any application within forty-five (45) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ACC pursuant to Section 8 of this Article.

The ACC shall be the only judge of the plans with regard to the requirements of this Article and may withhold approval for any reason, including purely aesthetic considerations. The ACC shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. If an Owner does not comply with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner in addition to any other available remedies.

Section 3. Encroachments onto Common Property. The ACC subject to this subparagraph may allow encroachments onto the Common Property as it deems acceptable.

Section 4. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Board of Directors or the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

Section 5. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the ACC may adopt different architectural standards and Design Guidelines for different Neighborhoods and for different parts of the same Neighborhood, based on visibility and location of the proposed modification in the Community. The approval of either the Board of Directors or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, or the ACC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 6. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the ACC, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable

attorney's fees, shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Article and its decisions. Furthermore, the Board shall have the authority to record in the Pickens or Gilmer County land records notices of violation of the provisions of this Article.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this Article, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remain on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

Section 7. Special Requirements. Plans and specifications will not be approved unless the improvement to be erected complies with the minimum zoning requirements and special conditions of Pickens or Gilmer County, Georgia under the zoning classification for the Community and/or Neighborhood on the day building permits are purchased and all construction of dwellings, structure and other improvements shall comply with the following:

(a) The site location of all dwellings and accessory buildings, if any, and all final plans and specifications shall be approved by the ACC or its designee.

(b) All construction shall be carried out in compliance with the laws, codes, rules, regulations and orders of all applicable governmental agencies and authorities.

(c) The size of the Lots shall be a minimum of three (3) acres and the minimum setback requirements for improvements on the Lots in the Subdivision shall be determined solely by the Design Guidelines set forth by the ACC, if any. All dwellings on all Lots shall contain a minimum of \$2,000 square feet on the main level excluding garages.

(d) Concrete, concrete block, or cinder block shall not be used as a

building material for the exposed exterior surface of any dwelling except for slab foundations or accessory structures in the Community. Stucco masonry walls, brick, rock and wood are permitted exterior surfaces; provided, however, there shall be no completely stuccoed dwellings or structures. The exterior finish of all structures shall be of a material and color that blend with the natural surroundings.

(e) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored outside of a dwelling or approved accessory structure, except for purposes of construction of a dwelling or accessory structure, nor shall any such building materials or devices be stored on the Community for longer than the length of time reasonably necessary for the construction of the dwelling or accessory structure in which such materials or devices are to be used.

(f) Construction of all dwellings or other structures erected shall be completed and as to dwellings, a certificate of occupancy shall be issued by the appropriate governmental entity on or before one (1) year from the date of commencement of construction. Construction shall be deemed to be commenced upon the pouring of foundation footings. Pre-fabricated or manufactured residences are prohibited.

(g) Any construction in the Community shall be at the risk of the Owner of such Lot, and such Owner shall be responsible for any damage to any street, curbing or utility resulting from such construction; repairs of such damage must be made by the Owner within ten (10) days after receiving notice from the Declarant or the Association of such damage.

(h) Any and all exposed foundations, except for slab foundations, and/or concrete walls shall be covered with stucco, stone, brick or siding.

(i) No fence or fencing-type barrier of any kind other than electronic fencing shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the ACC and in conformance with the Design Guidelines.

(j) All utilities must be buried and shall not be located above ground.

(k) Above ground swimming pools shall not be erected, constructed,

or installed on any Lot.

(l) No trash or construction debris shall be buried on any portion of the Community.

(m) Adequate off-street parking shall be provided for each Lot.

(n) A mailbox shall be located on each Lot, which mailbox shall conform to the Design Guidelines and to the rules and regulations of the United States Postal Service.

(o) No activity which may create erosion or siltation problems shall be undertaken in the Community without the prior written approval of the ACC or its designee of plans and specifications for the prevention and control of such erosion or siltation. The ACC or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, and requiring landscaping as provided for herein. No activity which results in contamination of or damage to any other property in the Community shall be conducted, and each Owner shall be liable for all resulting damages from such activity and for restoration of all property damaged from contamination resulting from or attributable to such activity.

#### Section 9. Variances.

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

(b) The architectural standards and Design Guidelines and their

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

## **Article VI**

### **Use Restrictions and Rules**

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants in the Community. These use restrictions may only be amended in the manner provided in Article XIII, Section 4, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants in the Community until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total eligible Association vote and the consent of Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X). Notwithstanding the above, until such time as one hundred (100%) percent of the Community has been developed and conveyed to purchasers in the normal course of development and sale no rules and regulations which affect the Declarant or Approved Builders may be adopted, modified, or deleted without the written consent of the affected Declarant, or Approved Builder.

#### Section 2. Use of Property.

(a) Residential Use. Each Lot and each Residence shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or Residence or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in the Residence on a Lot may conduct such ancillary business activities within the Residence so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Residence;

(b) the business activity does not involve persons coming onto the Community who do not reside in the Community or door-to-door solicitation of residents of the Community (except that deliveries may be made by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (c) the business activity conforms to all zoning requirements for the Community; (d) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (e) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board of Directors; and (f) the business activity does not result in a materially greater use of the Common Property facilities or Association services.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity.

### Section 3. Leasing.

(a) General. Lots may be leased for residential purposes only. All leases shall have a minimum term of one (1) year and a copy of all leases shall be given to the Board of Directors by the Owner of the Lot within thirty (30) days of entering into the lease. All leases shall require, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association and shall also obligate the tenant to comply with these documents.

(b) Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines adopted pursuant to the Declaration which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and guests and invitees of Occupants or Owners. The Owner shall be responsible for insuring that the Occupant, and the guests, invitees and licensees of the Owner or the Occupant



strictly comply with all provisions of the Declaration, Bylaws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 4. Vehicles. The term "vehicles", as used in this provision, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, golf carts and automobiles. All vehicles shall be parked within garages, on driveways or on other paved parking areas in the Community. Parking in front yards is prohibited. Motor homes, boats, trailers, and campers may be parked on a Lot other than in a garage so long as the location is not visible from any road or adjoining Lot.

No vehicle may be left upon any portion of the of the Common Property, for a period longer than five (5) days if it is unlicensed or if it is in a condition so that it cannot operate on public streets. After the five (5) day period, the unlicensed or inoperable vehicle shall be considered a nuisance and may be removed from the Community. No eighteen wheel trucks or the cabs of these trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Community, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Community. However, moving vans, service or delivery vehicles may be parked in the Community for such period of time as is reasonably necessary to provide each service.

No motorized vehicles shall be permitted on pathways, or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Section 5. Animals and Pets. No Owner or Occupant may keep any pets other than a reasonable number of generally recognized household pets on any portion of the Property. No Owner or Occupant may keep, breed, or maintain any pet for any commercial purpose. Pets are not permitted to roam the Property and must be kept on a leash or be under the control of a responsible person at all times when not on the Owner or Occupants Lot. No livestock, including, but not limited to horses, may be kept on a Lot.

Section 6. Signs. No sign of any kind except one professionally lettered security sign not to exceed four (4") inches by four (4") inches may be displayed on a Lot, shall be erected by an Owner or Occupant within the Community without the prior written consent of the ACC. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs. This Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage. No advertising, directional or vendor signs shall be permitted within the Community except as authorized by the Declarant under Article XIII, Section 14 of this Declaration.

Section 7. Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Community; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:

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

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

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

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

Section 8. Firearms and Fireworks. The use, display or discharge of firearms or fireworks on any portion of the Community is prohibited; provided,

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

Section 9. Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from a Lot and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

Section 10. Clotheslines, Garbage Cans, Woodpiles, Recreational Equipment, Etc. All basketball hoops, basketball goals, swimming pools or playground equipment, clotheslines, garbage cans, woodpiles, and related equipment and other similar items shall be located or screened so as to be concealed from view from any road and from adjacent Lots. Any playground or other play areas or equipment located on the Common Property shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 11. Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.

Section 13. Artificial Vegetation, Exterior Sculpture, and Similar Items. Artificial vegetation, exterior sculptures, fountains, flags, and similar items may be placed on a Lot so long as they are not visible from any road or any adjacent Lot without the written approval of the ACC.

Section 14. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on and in his or her Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will discharge foul or obnoxious odors or that will cause any noise or other condition that will or might

disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier, speaker or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. However, any siren or device for security purposes shall contain a device which causes it to automatically shut off within fifteen (15) minutes.

Section 15. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken in any part of the Community except within closed garages.

Section 16. Abandoned Personal Property. Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property, Area of Common Responsibility or on the rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property, Area of Common Responsibility or on the rights-of-way located within the Community in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

Section 17. Tree Removal and Improvements or Alterations to the Conservation Area. No trees having a diameter of six (6) inches or more and a height of more than eight (8) feet above the ground shall be removed without the prior

written consent of the Architectural Control Committee, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees or for safety reasons; or (c) trees within ten (10) feet of the residence, driveway, or walkways constructed or to be constructed on the Lot.

Section 18. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 19. Sight Distance at Intersections. All property located at street intersections and at the intersections of streets and driveways shall be landscaped so as to permit safe sight across the corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 20. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, and approved by the ACC.

Section 21. Subdivision of Lots. No Lot shall be subdivided or its boundary lines changed except the Declarant expressly reserves the right to replat any Lot(s) boundaries owned by Declarant. Any such division, boundary line change, or replatting by the Declarant shall not be in violation of the applicable subdivision and/or zoning regulations.

Section 22. Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant on any portion of the Community, other than by Declarant so long as the Declarant has an option unilaterally to subject additional property to this

Declaration as provided in Article X, at any time, either temporarily or permanently, without the written approval of the Board.

Section 23. Use of Common Elements Including Amenities. There shall be no obstruction of the Common Property, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Property without the prior written consent of the Board, except as specifically provided herein.

Section 24. In the event the Owner desires to sell, exchange or otherwise transfer, a Residential Lot, either improved or unimproved, within The Georgian Highlands, then said Lot shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for said Lot (a bona fide offer has been made for said Lot ( a bona fide offer must be in writing stating both the price and the terms thereof), and the said Company shall have thirty (30 days) from the latter of: (a) the date of such offer, or (b) the date upon which all assessment owned to the Association by the Owner have been paid, within which to exercise its option to purchase said Lot at such price and terms, then the Owner of said Lot shall have the right to sell said Lot, subject however to all covenants and limitations applicable thereto, at the price and terms it was offered to the Company.

Should, however such sale to someone other than the Company not be consummated within six (6) months of the date of the offer transmitted to the Company, the terms and limitations of this paragraph shall again be imposed upon any sale by the Owner.

If the Company shall elect to purchase such property, the transaction shall be consummated within thirty (30 ) days following delivery of notice by Company to the Owner of its decision to purchase.

The provisions of this paragraph shall not apply to transfers occurring upon the death of the Owner, or transfers within the immediate family of the Owner; (immediate family is deemed to include only mothers, fathers, sons, daughters, sisters and brothers) and to foreclosures of mortgages and deeds to secure debt whether by a sale under power or otherwise.

## **Article VII**

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

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any

insurance then in effect, of all landscaping and improvements located on the Common Property. The Association, as part of its maintenance obligation regarding the Area of Common Responsibility shall maintain and repair all roads, streets and other paved areas in the entire Community.

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

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

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

Section 2. Owner's Responsibility. Except as provided in Section 1 above and unless such maintenance responsibility is otherwise assumed or assigned to the Association or a Neighborhood pursuant to this Declaration, all maintenance of the Lots and all structures, parking areas, landscaping, and other improvements on a Lot shall be the sole responsibility of the Owner, who shall maintain such areas in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors determines that such areas are not maintained in a manner consistent with the Community-Wide Standard and this Declaration, except

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

Section 3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring costs of certain portions of the area to be maintained by the Association under Section 1 of this Article which is within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, regardless of ownership of such areas and improvements and regardless of the fact that such maintenance may be performed by the Association. Under no circumstances shall a Neighborhood Assessment be imposed for the maintenance, repair or operation of the walking trails, picnic area, gazebo and playground or any other recreational amenity that may be added to the Property for the use and enjoyment of all Owners in the Community.

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

Section 4. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal



property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

## **Article VIII**

### **Insurance and Casualty Losses**

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

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

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

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

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

(a) All policies shall be written with a company authorized to do business in Georgia.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by the Board of Directors. In conducting such reviews the Board may engage an expert whom in its sole discretion it deems fit.

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

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

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

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

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

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

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

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

Section 2. Individual Insurance. Each Owner of a Lot shall be obligated to obtain and maintain at all times blanket all-risk casualty insurance on such Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. If reasonably available, the casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, including vandalism and malicious mischief, and shall be in an amount

sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners of Lots shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times and Owners shall provide a certificate of such required insurance to the Board of Directors, upon request. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner and the Mortgagee of such Owner.

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

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

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

If the damage or destruction for which the insurance proceeds are paid is not sufficient to cover the cost of repair or reconstruction, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special

assessment against all Owners in proportion to the number of Lots and/or Units owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be retained by and for the benefit of the Association in an Association account.

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

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

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

### **Article IX** **Condemnation**

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

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

Section 1. Unilateral Annexation By Declarant.

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

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

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

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

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

Section 1. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 2. Notice to Association. Upon request, each Lot and Unit Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

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

Section 1. Easements for Use and Enjoyment.

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

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

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

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

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

(b) Any Owner may delegate his or her right of use and enjoyment in and to the Common Property to the members of his or her family residing in the Lot,



tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of the Owner's Lot, if leased.

Section 2. Easements for Utilities. There is reserved to the Declarant, Approved Builders, and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or Board, as applicable, shall have the right to grant such easement.

Section 3. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XIII, Section 2, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard if an Owner or Occupant does not cure the condition after request by the Board. For purposes of this Section, a water or other utility leak, fire, strong foul odor, obvious insect infestation, or sounds indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry onto a Lot and into a home on a Lot. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a property shall exist.

Section 4. Easement for Maintenance. Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the

Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article VII, including, without limitation, an easement over Lots adjacent to the ridge in the central portion of the Community for maintenance of the Conservation Area shown on the recorded plat for the Community trails. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect the property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 5. Easement over Streets. Every Owner and Occupant and his or her tenants, guests, invitees, agents and contractors shall have an easement over, on and to the roads, streets and paved areas in the Community for access to and ingress and egress to and from his or her Lot.

Section 6. Public in General. The easements and rights created in this Article XII do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Pickens or Gilmer County, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community which, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

### **Article XIII** **General Provisions**

Section 1. Enforcement. The Community shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots, and the Common Property; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or

special meeting of the membership. Every Owner and Occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Lot, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

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

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

(a) Notice. If any provision of the Declaration, Bylaws, Design Guidelines or any rule or regulation of the Association is violated, the Board shall send the violator written notice identifying the violation and fine(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or fine(s) or to request reconsideration of the fine(s). Fine(s) may be effective or commence upon the sending of such notice or such later date specified

in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

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

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

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations; provided, however, written notice shall be given to the Owner of the Lot at least two (2) days prior to the time that any items of construction are altered or demolished. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Unit Owner and shall be collected as provided herein for the collection of assessments. Furthermore, the Board of Directors shall have the authority to record in the Pickens or Gilmer County, Georgia land records notices of violation of the provisions of the Declaration, the Bylaws, Design Guidelines and rules and regulations.

Section 3. Duration. The covenants and restrictions of this Declaration

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

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

In addition to the above, this Declaration may be amended upon the

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

Section 5. Security. **THE ASSOCIATION OR THE DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SAFETY IN THE COMMUNITY. HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR THE DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY FOR THE COMMUNITY. FURTHERMORE, NEITHER THE DECLARANT NOR THE ASSOCIATION GUARANTEES THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE COMMUNITY AND COMMIT CRIMINAL ACTS NOR DOES THE DECLARANT OR THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.**

Section 6. Dispute Resolution. Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant

files any lawsuit against the Association, the Board, any director or officer or any agent of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

Section 7. Partition. The Common Property shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

Section 8. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 9. 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.

Section 10. Captions. 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.

Section 11. Preparer. This Declaration was prepared by George E. Nowack, Jr., Weissman, Nowack, Curry & Wilco, P.C., Two Midtown Plaza, 15<sup>th</sup> Floor, 1349 West Peachtree Street, N.E., Atlanta, Georgia 30309.

Section 12. 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.

Section 13. Indemnification. In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director, officer or committee member of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

Section 14. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, Design Guidelines, and any amendments, so long as there is development and construction related to the initial sale of residences constructed in the Community and so long as Declarant has the right to add Additional Property to the Community in accordance with Article X hereof, it shall be expressly permissible for Declarant and any Approved Builder to maintain and carry on, upon such portion of the Community as Declarant or any Approved Builder may deem necessary, such facilities and activities as in the sole opinion of Declarant or any Approved Builder may be required, convenient, or incidental to Declarant's or any Approved Builder's development, construction, and sales activities related to property described on Exhibit "B" and Exhibit "C" to this Declaration, including, but without limitation the following:



(a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community;

(b) the right to tie into any portion of the Community with driveways, parking areas and walkways;

(c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(d) the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, residences, model residences, and sales offices. Declarant and any Approved Builder may use residences, offices, or other buildings owned or leased by Declarant or an Approved Builder as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office without charge.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant or an Approved Builder owns any property in the Community, or which is subject to annexation to the Community, primarily for development and/or sale.

Section 15. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the Directors and Officers of the Association under the Bylaws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' written notice.

Section 16. Books and Records.

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

(i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;

(ii) its Bylaws or restated Bylaws and all amendments to them currently in effect;

(iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(iv) resolutions adopted by either its members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of members or any class or category of members;

(v) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(vi) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(vii) a list of the names and business or home addresses of its current directors and officers; and

(viii) its most recent annual report delivered to the Secretary of State.

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

records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

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

(ii) accounting records of the Association; and

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

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

Section 17. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy, the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

Section 18. Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

Section 19. Agreements. Subject to the prior approval of Declarant (so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs,

legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 20. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

Section 21. Variances. Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 17<sup>th</sup> day of November, 2003.

**THE HIGHLANDS AT CLEAR  
CREEK, L.L.C**

By:

\_\_\_\_\_  
Ramesh Venugopal  
Partner, Highlands at Clear Creek LLC  
10113 Big Canoe, GA 30143

Signed, sealed, and delivered  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
in the presence of:

\_\_\_\_\_  
Witness

---

Notary Public

My Commission Expires: \_\_\_\_\_

**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**THE HIGHLANDS AT CLEAR CREEK**

THIS DECLARATION is made on the date set forth below by The Highlands at Clear Creek, L.L.C., a Georgia Limited Liability Corporation ("Declarant");

**WITNESSETH:**

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

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

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

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

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

Return to: Ramesh Venugopal  
Highlands at Clear Creek LLC,  
10113 Big Canoe  
Jasper, Georgia, 30143

**DECLARATION OF PROTECTIVE COVENANTS**

**FOR**

**THE HIGHLANDS AT CLEAR CREEK**

**PHASE IV- Section A**

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## **EXHIBIT "A"**

### **Definitions**

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

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

(b) "Association" shall mean the Highlands at Clear Creek Homeowners Association, Inc., a nonprofit Georgia corporation, its successors and assigns.

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

(d) "Bylaws" shall refer to the Bylaws of the Highlands at Clear Creek Homeowners Association, Inc., attached to this Declaration as Exhibit "D" and made a part of this Declaration

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

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

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

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

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

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

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

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

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

(m) "Neighborhood" shall mean the each a separately denominated residential living area within the Community.

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

(o) "Occupant" shall mean any Person occupying all or any portion of a Lot in the Community for any period of time, regardless of whether such Person is a tenant or the Owner of such Property.

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

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

(r) "Residence" shall mean the structure and all outbuilding constructed on a Lot.

(s) "Supplementary Declaration" shall mean an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes additional restrictions and obligations on the property, or both.

**EXHIBIT "B"**

**Property Submitted**

ALL THAT TRACT or parcel of land lying and being in Land Lots 76, 77, 104 and 105 of the 5<sup>th</sup> District, 2<sup>nd</sup> Section of Gilmer County being Lots 170 to 210, The Highlands as shown on plats of survey prepared by Chastain & Reece, P.C., dated 30<sup>th</sup> October, 2003 bearing the seal of Mark E. Chastain, Georgia registered land surveyor no. 2718 recorded in Plat Book 41 Pages 232-A to Pages 232-I of the Gilmer County, Georgia records.

## **EXHIBIT "C"**

### **Additional Property Which May Unilaterally Be Submitted by Declarant**

ALL THAT TRACT or parcel of land lying and being in Land Lots 78, 79, 111, 112, 141, 142 and 148 of the 5<sup>th</sup> District, 2<sup>nd</sup> Section of Pickens County, Georgia, and in Land Lots 39, 44, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 104, 105, 106, 107 and 108 of the 5<sup>th</sup> District and 2<sup>nd</sup> Section of Gilmer County, Georgia, as shown on a Composite Plat for Thomas C. Bowen prepared by Cherry Log Survey Co., Inc., dated September, 1998, revised March 17, 1999, bearing the seal of Joel Jordan, Georgia Registered Land Surveyor No. 2430, as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Pickens County, Georgia Records, and Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Gilmer County, Georgia, Records, and in Land Lots 290, 291 and 322 of the 12<sup>th</sup> District and 2<sup>nd</sup> Section of Gilmer County, Georgia, as shown on a Composite Plat for Thomas C. Bowen prepared by Cherry Log Survey Co., Inc., dated November, 1998, bearing the seal of Joel Jordan, Georgia Registered Land Surveyor No. 2430, as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Gilmer County, Georgia Records, which plats by reference thereto are incorporated in this description.

LESS AND EXCEPT that property located in Land Lots 105, 106, 111, 112, 141, 142 and 148 of the 5<sup>th</sup> District, 2<sup>nd</sup> Section of Pickens County and Gilmer County being Lots 1-46 inclusive of Phase One, The Highlands as shown on plats of survey prepared by Chastain & Reece, P.C., dated July 13, 2000 bearing the seal of Mark E. Chastain, Georgia Registered Land Surveyor No. 2718 recorded in Plat Book 35, Pages 174-179 of the Gilmer County, Georgia Records and Plat Book II, Pages 218-223 of the Pickens County, Georgia Records.

LESS AND EXCEPT that property located in Land Lots 44, 65 and 66 of the 5<sup>th</sup> District, 2<sup>nd</sup> Section Gilmer County, Georgia being Lots 47-144 inclusive of Phase Two, The Highlands as shown on plats of survey prepared by Chastain & Reece, P.C., dated January 5, 2001 bearing the seal of Mark E. Chastain, Georgia Registered Land Surveyor No. 2718 recorded in Plat Book 36, Pages 55 of the Gilmer County, Georgia Records.

LESS AND EXCEPT that property located in Land Lots 78, 79 and 80 of the 5<sup>th</sup> District, 2<sup>nd</sup> Section of Pickens County, Georgia being Lots 146- 163 inclusive of Phase Three, The Highlands as shown on plats of survey prepared

by Chastain & Reece, P.C., dated July 20, 2001 bearing the seal of Mark E. Chastain, Georgia Registered Land Surveyor No. 2718 recorded in Plat Book LL, Page 113 of the Pickens County, Georgia Records.