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Attn: David C. Boy, IV

STATE OF GEORGIA

COUNTY OF CHEROKEE

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,**  
**AND EASEMENTS FOR OWENBY**



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**LIST OF EXHIBITS**

- EXHIBIT "A" - DESCRIPTION OF SUBMITTED PROPERTY
- EXHIBIT "B" - ADDITIONAL PROPERTY
- EXHIBIT "C" - BYLAWS

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS**

**AND EASEMENTS FOR OWENBY**

THIS DECLARATION is made on the date first set below by Owenby Development, LLC a Georgia Limited Liability Company (hereafter referred to as the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto;

WHEREAS, Declarant intends to subject the real property described in Exhibit "A" attached hereto to the provisions of this Declaration to create a residential community and to provide for subjecting and annexing additional real property to the provisions of this Declaration; and

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" attached hereto is subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged, and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens set forth herein, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any part of the property subjected hereto, including their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of such property.

ARTICLE I. DEFINITIONS

1.1. Additional Property means the property described in Exhibit "B" attached hereto, which is incorporated herein by this reference.

1.2. Association means Owenby Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

1.3. Board or Board of Directors means the elected body responsible for the management and operation of the Association.

1.4. Builder means any Person which purchases one or more Lots for the purpose of constructing improvements thereon for later sale to consumers in the ordinary course of such Person's business.

1.5. Bylaws mean the Bylaws of Owenby Homeowners Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.

1.6. Common Property means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners, or land adjacent thereto which is intended for the common use and enjoyment of the Owners, or any other land to which the Association has occupancy or use rights, including without limitation:

- a. any park, open space, private street, subdivision entrance area and monuments, and street lights (until such time as accepted by a municipality, other government agency, or utility); and
- b. any storm water facilities that serve the Community, including any detention/retention pond (until such time as accepted by a municipality or other government agency).

1.7. Community or Owenby means all property subjected and annexed to this Declaration.

1.8. Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board.

1.9. Declarant means Owenby Development, LLC, a Georgia Limited Liability Company, its successors or assigns.

1.10. Declaration means this Declaration of Covenants, Conditions, Restrictions, and Easements for Owenby.

1.11. Effective Date of this Declaration means the date that this Declaration of Covenants, Conditions, Restrictions, and Easements for Owenby is recorded in the Cherokee County, Georgia land records.

1.12. Eligible Mortgage Holder means a holder of a first mortgage secured by a Lot who has requested notice of certain items under Article XVI of this Declaration.

1.13. Lot means a portion of the Community intended for ownership and use as a single-family dwelling site and as shown on the plats for the Community recorded in the Cherokee County, Georgia land records.



1.14. Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation against a Lot.

1.15. Mortgagee or Mortgage Holder means the holder of any Mortgage.

1.16. Occupant means any Person occupying a Lot for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

1.17. Owner means the record title holder of a Lot, whether one or more Persons, but shall not include a Mortgage Holder.

1.18. Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

1.19. Supplemental Declaration means an instrument recorded pursuant to Article III, Section 3.1 of this Declaration to annex and subject all or a portion of the Additional Property to the Declaration.

1.20. Courtyard is defined as the area bounded by fences enclosing a portion of a Lot for the private use of an Owner. The Courtyard shall be for the use of the Owner which has access to the Courtyard from the Owner's home, regardless of whether a portion of the Courtyard lies on the adjacent Owner's Lot subject to these covenants, conditions, restrictions and easements. No area compromising a Courtyard shall be required to be maintained by the Association.

1.21. Courtyard Fence means a fence which creates the physical boundary of a Courtyard property subject to the Declaration.

## ARTICLE II. PROPERTY SUBJECT TO DECLARATION

2.1. Location and Description. The property subject to this Declaration is located in Land Lot 889 of the 15<sup>th</sup> District, 2<sup>nd</sup> Section of Cherokee County, Georgia, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

2.2. Additional Property. All or a portion of the Additional Property may be annexed and subjected to this Declaration as set forth in Article III, Section 3.1 hereof.

## ARTICLE III. DECLARANT RIGHTS

In addition to any other rights of the Declarant set forth in the Declaration or Bylaws, the Declarant reserves the rights included within this Article.

3.1. Annexation of Additional Property. Until all of the Additional Property described on Exhibit "B" has been annexed and subjected to this Declaration, or ten years from the Effective Date of this Declaration, whichever is earlier, the Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." Such annexation shall be accomplished by recording a Supplemental Declaration describing the property to be annexed. Such Supplemental Declaration shall not require the consent of the Lot Owners but shall require the consent of the owner of the property to be annexed, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant to acquire, annex, or develop any of the property described in Exhibit "B."

3.2. Construction, Marketing and Sales. Declarant and any Builder authorized by the Declarant may maintain and carry on without fee or charge upon the Common Property or any Lot owned by the Declarant such activities as, in the sole discretion of the Declarant, may be reasonably required, convenient, or incidental to the construction or improvement of the Lots or Common Property and the sale of the Lots, including, but not limited to, business offices, signs, model homes, construction trailers, and sales offices. In addition, if reasonably required, the Declarant and Builders may park vehicles in areas other than driveways or garages.

3.3. Board of Directors. The Declarant shall have the right to appoint and remove directors and officers of the Association until the earlier of the following to occur: (a) the date on which one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed to any Person not constituting the Declarant for residential use; or (b) the voluntary surrender by Declarant, in writing, of the authority to appoint and remove the Association's directors and officers. In the event the Declarant voluntarily surrenders the authority to appoint and remove the Association's directors and officers, the Declarant shall thereafter retain the right to veto any action of the Board of Directors until the date on which one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed to any Person not constituting the Declarant for residential use.

3.4. Amendments. Until the date on which one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed from Declarant to any other Person, any amendment to the Declaration or Bylaws must be approved in writing by the Declarant prior to becoming effective; and during such time, Declarant shall have the unilateral right to amend the Declaration from time to time without the approval of the Association members.

3.5. Right to Notice of Claims. No Person shall retain an expert for the purpose of inspecting the design or construction of any dwelling, structure, or improvement in the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the Owner of the property to discuss the Owner's concerns and conduct

its own inspection. Declarant reserves the right for itself and others it may designate to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Community, including the Lots and Common Property, and a perpetual easement of access though the Community for such purposes. No entry into a dwelling shall be permitted without the expressed consent of the Owner. Any Person exercising this right shall promptly repair, at such Person's expense, any damage resulting from the exercise thereof.

3.6. Assignment and Termination of Declarant Rights. Any and all special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred or assigned in whole or in part to any other Person, provided the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Cherokee County, Georgia land records. Any and all special rights and obligations of Declarant set forth in this Declaration or the Bylaws may also be terminated in whole or in part by Declarant pursuant to a written instrument signed by Declarant and duly recorded in the Forsyth County, Georgia land records.

3.7. Conveyance of Common Property. Declarant and its designees may convey or transfer, from time to time, to the Association improved or unimproved real property, or interest in real property, located within the properties described in Exhibit "A" or "B," personal property, and leasehold and other property interests. Such property shall be accepted by the Association "as is" and thereafter shall be maintained by the Association at its expenses for the benefit of the Owners, subject to the terms of this Declaration and any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements to the property conveyed to the Association, including, without limitation, dredging or removing silt from lakes or ponds. Upon written request of Declarant, the Association shall re-convey to Declarant any portions of the Community originally conveyed by Declarant or its designee to the Association for no consideration, to the extent conveyed by Declarant or its designee in error or needed by Declarant or its designees to make adjustments in property lines.

#### ARTICLE IV. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1. Membership. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be a member of the Association. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, 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 owned. 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 be appurtenant to 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 for each Lot owned.

4.2. Voting. Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it. A member's right to vote shall automatically be suspended during any period in which a member is more than thirty (30) days delinquent on any assessment or charge, and the member shall be ineligible to vote on any matter until the member's account balance has been paid in full and such member's vote shall not be counted for any purpose.

4.3. Entity Members. In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary, or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Owner of the Lot. The membership rights of an Owner which is a corporation, partnership, or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

#### ARTICLE V. ASSOCIATION RIGHTS AND RESTRICTIONS

5.1. Association Rights and Restrictions. The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of any other right it may have, to:

(a) make and to enforce reasonable rules and regulations governing the use of the Lots and of the Common Property;

(b) enforce the Declaration, Bylaws, and rules and regulations of the Association by imposing reasonable monetary fines and suspending use and voting privileges. These powers, however, shall not limit any other legal means of enforcing such documents or provisions by either the Association or, in an appropriate case, by an aggrieved Owner;

(c) grant permits, licenses, utility easements, and other easements, permits or licenses under, through or over the Common Property;

(d) the right of the Board of Directors to convey all or a portion of the Common Property to any Person upon the written approval of at least two-thirds (2/3) of the total vote of the Association membership; provided, however, such written approval shall not be required for the Board to re-convey property to the Declarant in accordance with Article III, Section 3.7 of this Declaration;

(e) control, manage, operate, maintain, replace and, in the Board's discretion, alter or improve all portions of the Community for which the Association is assigned maintenance responsibility under this Declaration;

(f) deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation, or eminent domain, in accordance with the provisions of this Declaration; and

(g) represent the Owners in dealing with governmental entities on matters related to the Common Property.

#### ARTICLE VI. ASSESSMENTS

6.1. Purpose of Assessment. The Association shall have the power to levy assessments as provided herein. Assessments shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Association and the membership, and for expenses of the Association as provided within the Declaration, and as otherwise authorized by the Board.

6.2. Creation of the Lien and Personal Obligation for Assessments. Except as specifically provided herein, each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments and charges; (ii) special assessments pursuant to Section 6.7 of this Article; and (iii) specific assessments, including reasonable fines, pursuant to Section 6.3 of this Article.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment reasonable attorney fees actually incurred from any prior judgment, if any), shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and the Owner's grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. The Board of Directors may, but is not obligated to, permit assessments to be paid in monthly, quarterly, or semi-annual installments. Other than the Declarant, no Owner may be exempted from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

6.3. Uniform Rate of Assessment and Specific Assessments. Annual assessments and special assessments shall be fixed at a uniform rate for all Lots for which assessments have commenced. Notwithstanding the above, the Board of Directors shall have the power to levy specific assessments against Lots pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board of Directors 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. The Board of Directors shall have the power to levy specific assessments as follows:

(a) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility hereunder, any common expenses benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received.

(b) Any common expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any Lot may be specifically assessed against such Lot, including, but not limited to, expenses and attorney's fees actually incurred by the Association in enforcing the Declaration, Bylaws or Association rules and regulations, regardless of whether or not an enforcement lawsuit has been filed.

(c) Other specific assessments, including fines, against an Owner and Owner's Lot deemed reasonable by the Board.

6.4. Computation of Operating Budget and Assessment. Prior to the beginning of each new fiscal year, the Board of Directors shall (1) prepare a budget covering the estimated expenses of the Association for the upcoming new fiscal year and shall fix in the budget the amount of the annual assessment for the upcoming new fiscal year, and (2) deliver a copy of the budget to each Owner at least sixty (60) days prior to the beginning of the new fiscal year. The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of expenses on which the Board may base the annual assessment. The Board may, but is not obligated to, permit the annual assessment to be paid in monthly, quarterly, or semi-annual installments. The budget and the assessment shall become effective unless disapproved by the majority of the total vote of the Association membership at a meeting of the membership held at least thirty (30) days prior to the beginning of the new fiscal year. Said meeting may be the annual meeting of the members if the annual meeting is held at least thirty (30) days prior to the beginning of the new fiscal year or may be at a special meeting requested in accordance with the Bylaws. If either (1) the membership disapproves the budget at least thirty (30) days prior to the beginning of the new fiscal year as provided herein, or (2) the Board fails for any reason to either (a) prepare a budget and fix the amount of the annual assessment for the new fiscal year or (b) deliver the budget to the members, as provided herein, then the budget and annual assessment in effect for the current fiscal year shall continue for the upcoming new fiscal year. In the event the annual assessment is insufficient to cover the actual common expenses of the Association during any fiscal year, the Board of Directors, upon ten days notice to the members, may increase the annual assessment during such fiscal year to cover the shortfall.

6.5. Fiscal Year. The fiscal year of the Association may be set by Board resolution or, in the absence thereof, shall be the calendar year.

6.6. Reserve Budget and Reserve Account. The Board shall prepare an annual or multi-year reserve budget which shall take into account the number and nature of replaceable assets, the expected life of such assets, and the expected repair or replacement costs of the assets. The Board shall establish a reserve account for such expected repair or replacement costs, and shall fund the reserve account from collected assessments. The reserve budget shall not operate as a limitation on the expenditures of funds in the reserve account, but, rather, the Board may spend funds in the reserve account as deemed reasonable by the Board.

6.7. Special Assessments. The Board may levy a special assessment against all Lots for which assessments have commenced to pay the costs of any improvement or repair on the Common Property, or for any other purpose as determined by the Board; provided, however, prior to becoming effective, any special assessment which would cause the total of special assessments levied in one fiscal year to exceed two hundred (\$200.00) dollars per Lot must be approved by the affirmative vote, written consent, or any combination of affirmative vote and written consent, of the Association members holding at least two-thirds (2/3) of the total eligible votes of the Association. An approved special assessment may be required to be paid during the fiscal year, or alternatively, upon the approval of the Board of Directors, may be paid over a set number of years.

6.8. Initiation Fee. Upon the conveyance of ownership of a Lot to any Person other than Declarant or a Builder, including all resales, a initiation fee shall become due and payable to the Association by each new Owner. The amount of the initiation fee shall be set by the Board of Directors at any time during the year in which this Declaration is recorded. Thereafter, prior to the beginning of each new fiscal year, the Board of Directors may determine the amount of the initiation fee for the upcoming new fiscal year. In the event the Board does not determine the amount of the initiation fee prior to the beginning of the next fiscal year, then the initiation fee amount in effect at such time shall, by default, continue for the next fiscal year. The initiation fee shall not be deemed to be an advance payment of any assessment and may not be paid in lieu of any assessment. The initiation fee shall be the personal obligation of the new Owner and shall constitute a lien against the Lot. Notwithstanding anything to the contrary herein, no initiation fee shall be due as a result of a conveyance of a Lot to an Owner's spouse, a person cohabitating with the Owner, or a corporation, partnership, company, or legal entity in which the Owner is a principal.

6.9. Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the date of the first conveyance of ownership of a Lot to any Person not constituting Declarant or the actual occupancy of an improved Lot with a certificate of occupancy for residential purposes, whichever is first to occur. The use of a Lot as a model home by Declarant shall not constitute occupancy for residential purposes.

6.10. Declarant's Obligation for Assessment. Declarant shall not be liable for the payment of any assessments, including annual, special or specific assessments, on its unsold Lots. However, Declarant may, but shall not be obligated to, elect to contribute to the Association on an annual basis the difference between the amount of assessments levied on the Lots subject to assessments and the amount of the Association's actual expenditures during the fiscal year (a "Subsidy"). Any Subsidy may be treated, in the Declarant's sole discretion, as either a voluntary contribution or a loan from the Declarant to the Association. Notwithstanding any language to the contrary herein or the Bylaws, any loan from Declarant to the Association shall not require the approval of the members of the Association. A Subsidy may be evidenced by one or more promissory notes from the Association in favor of the Declarant. The payment of a Subsidy in any fiscal year shall under no circumstances obligate Declarant to continue payment of a Subsidy in future years.

6.11. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(a) If any assessment, fine, or charge is not paid in full within ten (10) days of the due date, a late charge equal to the greater of ten dollars (\$10.00) or ten percent (10%) of the amount not paid or such higher amount as may be authorized by law, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten percent (10%) per annum or such higher amount as may be authorized by law, shall accrue from the due date.

(b) If partial payment of an assessment, fine, or charge is made, the amount received may be applied by the Board, in respective order, to post-judgment attorney's fee from any prior judgment, if any, then to costs and attorney's fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments.

(c) If an assessment, fine, or charge due from an Owner remains delinquent and unpaid for more than thirty (30) days from the date due, then a notice of delinquency may be given to that Owner stating that if the unpaid assessment or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board may accelerate and declare immediately due all of that owner's unpaid installments of the assessment. If the Owner fails to pay all amounts currently due within ten (10) days of the date of the notice of delinquency, the Board may then accelerate and declare immediately due all installments of the assessment without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the assessment in installments, unless reinstated in the Board's discretion. The notice of acceleration provided herein may be included in a collection litigation complaint filed against an owner for unpaid assessments and charges.

(d) If an assessment, fine, or charge remains unpaid more than sixty (60) days after the due date, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Georgia law, including



reasonable attorney's fees actually incurred (and including post-judgment reasonable attorney's fees actually incurred from any prior judgment, if any).

(e) A member's right to vote and right to use the recreational facilities, if any, shall automatically be suspended without notice during any period in which a member is more than thirty (30) days delinquent on any assessment or charge, and the member shall be ineligible to vote on any matter or use the recreational facilities until the member's account balance has been paid in full.

(f) If an assessment, fine, or charge remains unpaid more than thirty (30) days after the due date, the Association, acting through the Board, shall have the right to suspend utilities, trash collection service, or other services to the Lot paid for as a common expense by the Association, if any. Any costs incurred by the Association in discontinuing and/or reconnecting any service, including reasonable attorney's fees actually incurred, shall be an assessment against the Lot. The utilities or other services shall not be required to be restored until all amounts owed by the Owner have paid in full and the expenses to disconnect and/or reconnect the utilities or other services have been paid in full. An Owner whose utility or service has been suspended hereunder shall not be entitled to use any such utility or service from any source, and any such unauthorized use shall be considered a theft of services.

(g) If an assessment, fine, or charge remains unpaid more than thirty (30) days after the due date, the Association, acting through the Board, may suspend the right of the Owner, including any Occupant of the Owner's Lot and all guests of the Owner or Occupant, to bring or park vehicles on the Common Property, including the streets, drives, driveways, and any other parking area; provided, however, the Board may not limit pedestrian, medical, fire, police or other health, safety, service or emergency vehicle ingress or egress to or from the Lot or deny necessary parking of clearly and properly identified handicapped vehicles used by handicapped Owners, Occupants or guests protected by the Fair Housing Act of 1988. Prior to suspending such vehicular access privileges, the Association shall provide the delinquent Owner written notice via United States First Class Mail or certified mail of its intention to do so not less than ten (10) days prior to the date of such suspension. Following the tenth (10th) day from the date of the mailing of the notice, the right of the Owner, including any Occupant of the Owner's Lot and all guests of the Owner or Occupant, to bring or park vehicles on the Common Property shall be automatically suspended until all amounts owed through the date of the notice are paid in full or unless otherwise agreed to by the Board. Any vehicle of an Owner, including any Occupant of the Owner's Lot and all guests of the Owner or Occupants, brought or parked on the Common Property in violation of the suspension may be immediately towed without further notice to such Owner or notice to such Occupant, guest, or the owner of the vehicle. The Association, acting through the Board, may also enforce such suspension by deactivating vehicular gate access and through the imposition of fines.

6.12. Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be

entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten dollars (\$10.00) or such higher amount as may be authorized by law, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

#### ARTICLE VII. ARCHITECTURAL CONTROLS

7.1. Architectural Standards. No Owner, Occupant, or any other Person, except the Declarant, may make any exterior change, alteration, modification (including exterior painting), or construction on a Lot, nor erect, place or post any thing or object which may affect the appearance of a Lot (including, but not limited to, any fence, playground equipment, light (except for reasonable seasonal decorative lights displayed between October 1 and January 15), basketball goal, storm door, exterior sculpture, or fountain), nor place any object in any window which is visible from the exterior of a dwelling, without first obtaining the written approval of the Architectural Control Committee ("ACC").

The standard for approval of all improvements hereunder shall include, but not be limited to: (1) aesthetic consideration, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, or design standards which may be adopted by the ACC, (4) harmony with the external design of the existing dwellings, Lots and structures, and the location in relation to surrounding dwellings, structures and topography, and (5) any other matter deemed to be relevant or appropriate by the ACC.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. If the ACC fails to approve, conditionally approve, or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this Article shall be deemed complied with, unless such construction, modification or improvement otherwise is in violation of the Declaration, the Bylaws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

The ACC shall be the sole arbiter of the application and may withhold approval for any reason whatsoever, including purely aesthetic considerations. The Association, acting through the Board, shall be entitled to stop any construction or modification which is not in conformance with approved plans. The ACC may publish design standards for exterior alterations or additions, and any request in compliance therewith shall be approved.

This Article shall not apply to the activities of the Declarant, including, but not limited to, any activity performed by or on behalf of the Declarant.

7.2. Architectural Control Committee.

(a) So long as the Declarant owns any property described in Exhibit "A" for development or sale or has the unilateral right to annex Additional Property to this Declaration, the Declarant shall be the sole member of the ACC and shall have the exclusive authority to administer and enforce architectural controls under this Article. Declarant's rights under this Article may be assigned in whole or in part.

(b) Upon the expiration of Declarant's authority to control architectural review for the Community, the Board of Directors shall appoint the members of the ACC. The ACC shall thereafter constitute a standing committee of the Association, and the ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. The chairperson of the ACC shall be a Board member. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which an application has been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not the submitted application is approved by the ACC, and the ACC may require payment of all such costs prior to approval of the application. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder. At any time during the review process, so long as the Declarant owns any property described in Exhibit "A" or "B," the Declarant shall have the power to veto any decision taken by the ACC.

7.3. Appeal. In the event the ACC disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. Such appeal must be in writing, contain all information the Owner would like the Board to consider, and be mailed to the Association by certified mail, return receipt requested. The Board shall rule on the appeal within thirty (30) days of receiving written notice requesting an appeal from the Owner. If the Board fails to render a decision on such appeal within thirty (30) days after the appeal and such information as the Board may reasonably require shall have been received, the ACC's decision shall be deemed overturned and this Article shall be deemed complied with, unless such construction, modification or improvement otherwise is in violation of the Declaration, the Bylaws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the appeal of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within fourteen (14) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate.

All decisions of the Declarant-controlled ACC shall be final, and there shall be no appeals of decisions of the Declarant-controlled ACC.

7.4. Limitation of Liability. Review and approval of any application pursuant to this Article may be made on any basis, including solely the basis of aesthetic considerations, and neither the Declarant, the Association, the Board, the ACC, nor any member of the foregoing shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Declarant, the Association, the Board, the ACC, or any member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or modifications to any Lot, nor may any action be brought against the Declarant, Association, the Board, the ACC, or any member thereof, for any such injury, damage, or loss. Neither the Declarant, the Association, the Board, the ACC, nor any member thereof, shall be liable to any Person for any reason whatsoever for any injuries or damages whatsoever relating in any way to the approval, disapproval or conditional approval of any application submitted to it pursuant to the terms of this Article.

7.5. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application, and enforcement of the architectural standards may vary accordingly. The approval of either the Board 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 of the Board or the ACC, shall not 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.

7.6. Enforcement. Any construction, alteration, or other work done in violation of this Article, the Declaration, the Bylaws, the Design Standards or any applicable zoning regulations shall be deemed to be nonconforming. Upon written request from the Board, a violating Owner shall, at the Owner's sole cost and expense, remove such nonconforming construction, alteration, or other work and restore the property to substantially the same condition as existed prior to such construction, alteration or work. Should the Owner fail to do so, the Board or its designees shall have the right, in addition to all other available remedies, to enter the property, remove the violation and restore the property, or obtain a court order compelling the violating Owner to do so. All costs thereof, including reasonable attorney's fees actually incurred, may be assessed against such Lot, regardless of whether or not litigation is filed.

In addition to the above, the Board 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 or those of the ACC. All costs of any such action, including reasonable attorney's fees actually incurred, may be assessed against such Lot.

Furthermore, the Board shall have the authority to record in the Cherokee County, Georgia land records notices of violation of the provisions of this Article. The Board may also pursue any other enforcement option set forth in this Declaration.

7.7. Commencement and Completion of Construction. All improvements approved by the ACC hereunder must be commenced within ninety (90) days from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within ninety (90) days of commencement. This Section shall not apply to any construction or modification performed by or on the behalf of the Declarant.

#### ARTICLE VIII. USE RESTRICTIONS

Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants, and Occupants comply with all provisions of this Declaration, the Bylaws, and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants, or Occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants, or Occupants.

8.1. Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within that dwelling so long as (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling; (2) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers, or other business invitees; provided, however, this provision shall not preclude delivery of materials or items by United States Postal delivery or by other customary parcel delivery services (U.P.S., Federal Express, etc.); (3) the business activity conforms to all zoning requirements for the Community; (4) the business activity does not increase traffic in the Community; (5) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (6) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the Board's sole discretion.

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) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this Article. Further, the activities of the Declarant, or any Person acting on behalf of Declarant, shall not be subject to this Section.

8.2. Number of Occupants.

(a) The maximum number of occupants in a dwelling on a Lot shall be limited to two (2) people per bedroom in the dwelling as originally constructed. "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

(b) If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the natural person(s) who will occupy the dwelling on the Lot who must have a significant relationship with the entity; provided, however, in the event the corporation, partnership, trust or other legal entity not being a natural person, or any officer, director, member, employee, trustee, beneficiary, partner or agent of such legal entity, receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument from or on behalf of the designated person(s), then such arrangement shall be considered leasing for purposes of this Declaration and the Owner shall be required to comply with Article IX of this Declaration. The designated person(s) to occupy the dwelling may not be changed more frequently than once every two (2) years.

8.3. Vehicles and Parking. No Owner or Occupant may keep more than a reasonable number of vehicles per Lot at any time. The Board may adopt reasonable rules limiting the number of vehicles which may be parked on a Lot and such other reasonable rules governing the parking of vehicles within the Community. Vehicles may only be parked in garages, driveways or other areas authorized in writing by the Board. Vehicles shall not be parked on any lawn, yard, or street.

Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. Each garage should be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible. Vehicles shall not be parked in a driveway unless and until the maximum number of vehicles are parked in the garage.

Disabled and stored vehicles are prohibited from being parked in the Community except in garages. For purposes of this Section, a vehicle shall be considered "disabled" if it does not have a current license tag or is inoperable. A vehicle shall be considered "stored" if it remains in a location, other than in a garage, without prior written Board permission, for fourteen (14) consecutive days or longer or if it is covered for more than two (2) consecutive days with a car cover or tarp.

Boats, trailers, trucks with a load capacity of one (1) ton or more, full-size vans (excluding mini-vans or utility vehicles used as passenger vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes and containing visible evidence of commercial use (such as tool boxes or tool racks), and vehicles with commercial writings on their exteriors are prohibited from being parked in the Community, except in garages or other areas designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on a Lot or the Common Property during normal business hours for the purpose of serving the Lot or the Common Property; provided, that, without the written consent of the Board, no such vehicle shall be authorized to remain on a Lot or the Common Property overnight or for any purpose except serving a Lot or the Common Property.

If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's rules and regulations, the Board may send a notice to the vehicle owner or user, or place a notice on the vehicle, specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation and shall include the name and telephone number of the person or entity which will do the towing or booting. If twenty-four (24) hours after such notice is placed on the vehicle, or three (3) days after the notice has been sent to the owner, the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot or dwelling, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed or booted in accordance with this Section, neither the Association nor any director, officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines.

8.4. Pets. No Owner or Occupant may keep any pets other than a reasonable number of generally recognized household pets on any portion of the Community. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Dogs must be kept on a leash

and be under the physical control of a responsible person at all times while outdoors in unfenced areas. Dogs may not be left unattended while leashed or tethered to any post, tree, or object. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on a Lot without prior written ACC approval.

Feces left by any pet on the Common Property, on any Lot, or in any dwelling, including the pet owner's Lot or dwelling, or anywhere in the Community must be removed promptly by the owner of the pet or the person responsible for the pet. Fines may be imposed to enforce this provision.

No potbellied pigs may be brought into or kept in the Community at any time. No dog determined in the sole discretion of the Board to be a dangerous dog may be brought into or kept in the Community at any time by any Lot Owner, Occupant, or guest of an Owner or Occupant. Any pet which endangers the health of any Owner or Occupant of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Community upon seven (7) days written notice by the Board. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

Any Owner or Occupant who keeps or maintains any pet on any portion of the Community shall be deemed to have indemnified and agreed to hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Community.

8.5. Fences. No chain link fence or cyclone fences may be placed in the Community, except by or on behalf of the Declarant. All fences, except those installed by or on behalf of the Declarant, must first be approved by the ACC before the commencement of any installation of the fence. No electric fence or "invisible fence" for the confinements of pets is permitted within the Community. Any fence on a Lot shall be placed along the rear property line of the Lot or within six inches into the Lot parallel to the rear property line and shall be placed along each side property line or within six inches into the Lot parallel to each side property line; provided, however, in the event of an obstruction, including, but not limited to, a creek, swale, drainage opening, or drainage easement, the ACC in its discretion may approve an alternative location for the fence on the Lot; but in no event may a fence be placed farther forward toward the street on which a dwelling on the Lot fronts than the rear-most portion of the dwelling.

8.6. Window Treatments. Unless otherwise approved in writing by the Board, all windows in a dwelling that face toward the street, except foyer or architectural windows, shall have window treatments, and any portion of any window treatment in a dwelling that is visible from outside of the dwelling shall be white or off-white in color. The ACC is authorized to adopt



guidelines for additional permissible window treatments, including, but not limited to, window treatments made of wood. Sheets, blankets, towels, flags, and other such items shall not be placed in any window or in any way used as window treatments.

8.7. Antennas and Satellite Dishes. No transmission antenna of any kind may be erected anywhere in the Community without written approval of the ACC. No satellite dish, direct broadcast satellite (DBS) antenna, or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Community, including a Lot. Satellite dishes and DBS and MMDS 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 authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as provided by this Section, no 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 outdoors on any portion of the Community, whether attached to a home or structure or otherwise.

8.8. Abandoned Personal Property. Personal property is 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 without prior written Board permission. Neither the Declarant, the Association, nor any director, officer or agent thereof shall be liable to any Person for any claim of damage resulting from the removal and/or discard of the personal property after such twenty-four (24) hour period.

8.9. Use of Common Property. There shall be no obstruction of the Common Property, nor shall any vehicle or anything else be kept, parked or stored on the streets and drives within the Community without prior approval of the Board. No Owner or other Person shall make any modification to or alteration of the Common Property without the prior written approval of the Board.

With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. The Board is authorized to charge a fee in an amount to be determined by the Board to the Owner for such reservation. Any such Owner or Owners who reserve a portion of the Common Property hereunder shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. Neither the Declarant, the Association, nor any director, officer or agent thereof shall be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Declarant, the Association, or their respective agents or employees.

8.10. Prohibition of Nuisance and Noise. Noxious, destructive, offensive, or unsanitary activity shall not be carried on within the Community. No Lot Owner or Occupant may use or allow the use of the Lot or any portion of the Community at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Community. In this regard, specific unauthorized and unreasonable annoyances or disturbances shall include, but not be limited to, the following:

(a) Any screaming, shouting, excessively loud talking, whistling, or playing of music or television if such conduct can be heard in the normal course of activities in any other dwelling;

(b) Any fighting, raucous behavior, or insobriety if such conduct can be heard in any other dwelling;

(c) The use of any alarm, equipment, or devise, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations at any time if such sounds can be heard or vibrations felt in the normal course of activities in any other dwelling;

(d) Any threatening or intimidating conduct towards any resident, guest, or pet in the Community;

(e) Any conduct which, in the Board's reasonable discretion, creates any danger or risk of injury to others or damage to property or which creates any threat to health or safety of any other resident or pet;

(f) Any excessively loud play or playground activities at any time if such conduct can be heard in the normal course of activities in any other dwelling;

(g) Any consistent dog barking that can be heard in the normal course of activities in any other dwelling;

(h) Any conduct which creates any noxious or offensive odor at any time if such odors can be detected in the normal course of activities in any other dwelling;

(i) Any similar action or activity which interferes with the peaceful use and enjoyment of other dwellings or the Common Property by any Owner, member of the Owner's family, guests, invitees, or Occupants; or

(j) Any construction or similar activities, other than construction activities of or on behalf of the Declarant, which can be heard in other dwellings outside the hours of 7:30 a.m. and 7:30 p.m. Monday through Friday and 9:00 a.m. and 6:00 p.m. Saturday.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator of this Section. The Board may, in its discretion, require any aggrieved Owner or Occupant to seek redress personally against the violator before the Association intervenes and commences enforcement action hereunder; provided, further, due to the general nature of violations of this Section, the Board may, in its discretion, elect that the Association not intervene or enforce this Section. No claim for any loss, damage or otherwise, and no defense of selective, arbitrary, or capricious enforcement, shall exist for any Person as a result of any decision by the Board not to enforce this Section.

8.11. Firearms and Fireworks. The display or discharge of firearms within the Community is prohibited; provided, however, that the display or discharge of lawful firearms within the Community is permitted by law enforcement officers. The term "firearms" includes "BB" guns, pellet guns, and other firearms of all types, regardless of size. The use of fireworks within the Community is prohibited. The term "fireworks" shall include those items as listed in Georgia Code Section 25-10-1. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

8.12. Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain in the Community without the prior approval of the Board or its designee, except that two (2) professional security signs not to exceed ten inches (10") by ten inches (10") each in size may be displayed on a Lot or from within a dwelling on a Lot and one (1) professionally lettered "For Sale" sign not to exceed two feet (2') by two feet (2') in size may be displayed on a Lot or from within a dwelling on a Lot being offered for sale. The Board shall have the right to erect reasonable and appropriate signs on the Common Property on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing open houses, births, birthdays or other events for limited periods of time. No "For Lease" sign or political sign shall be allowed on a Lot without the approval of the Board. No "For Sale" signs or directional signs shall be permitted on the Common Property without the approval of the Board. This Section shall not apply to the Declarant, or its agents or designees.

8.13. Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate on a Lot or in a dwelling. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. The Board may establish rules and regulations regarding the storage location of trash bags, trash cans, and receptacles and the placement of same for pick-up. This Section shall not apply to the Declarant, or its agents or designees.

8.14. Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community, except in a dwelling or garage with the garage door shut. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and similar items may be kept outside of a dwelling. The Board of Directors shall have the authority to adopt reasonable rules and regulations governing the placement of items outside of a dwelling. This Section shall not apply to the Declarant, or its agents or designees.

8.15. Impairment of Dwellings and Easements. An Owner shall not undertake any act or work that will impair the structural soundness or integrity of a dwelling or impair any easement, nor do any act nor allow any condition to exist which will adversely affect other Lots or their Owners or Occupants.

8.16. Erosion Control. No activity which may create erosion or siltation problems anywhere in the Community shall be undertaken, except construction activities undertaken by Declarant or on its behalf.

8.17. Window Air Conditioners. No air condition shall be installed in any window of any dwelling.

8.18. Delivery Receptacles and Property Identification Markers. The ACC shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles as well as property identification markers.

8.19. Subdivision of Lots. No Lot may be subdivided into a smaller Lot without the written consent of the Declarant.

8.20. Garage Sale. No garage sale, yard sale, or similar activity shall be conducted in the Community without prior approval of the Board. The Board may additionally permit Community garage sale or yard sale days.

8.21. Easements. All property subjected to this Declaration shall be subject to those easements, if any, set forth on any recorded plat thereof.

8.22. Traffic Regulations. All vehicular traffic on the private streets and roads in the Community shall be subject to the provisions of the state and local laws concerning operation of motor vehicles on public streets. The Association is authorized to promulgate, administer, and

enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including reasonable safety measures and speed limits and including modifications of those in force on public streets, within the Community. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems appropriate, including levying fines for violation thereof. In the event of a conflict between such provisions of state and local laws and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers properly licensed to operate motor vehicles on the public roads within the State of Georgia may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the streets in the Community shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all Owners and Occupants.

8.23. Age Restriction. The Lots, including the dwellings located thereon, within the Community are intended for the housing of persons fifty-five (55) years of age or older, although younger persons are not restricted from occupying a Lot along with a person fifty-five (55) years of age or older so long as such co-occupancy is in compliance with this Section. In addition, certain exceptions may be made pursuant to this Section as provided herein. The provisions of this Section are intended to be consistent with, and are set forth in order to comply with the Fair Housing Act, 43 U.S.C. § 3601, *et seq.*, and O.C.G.A. § 8-3-205, *et seq.*, as such laws may be amended from time to time and such regulations adopted pursuant to such laws (collectively, the “Fair Housing Acts”), regarding discrimination based on familial status. Until sixty (60) days following the date on which one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been issued a certificate of occupancy and have been conveyed to any Person not constituting Declarant or an Approved Builder for residential use, Declarant shall have the power to amend this Section for the purpose of making said Section consistent with the Fair Housing Acts, the regulations adopted under the Fair Housing Acts, and any judicial decisions arising under or relating to the Fair Housing Acts, in order to maintain the intent and enforceability of Section.

(a) Qualifying Occupant. Except as otherwise permitted in this Section, at least one Occupant of each occupied Lot must be fifty-five (55) years of age or older (the “Qualifying Occupant”). Notwithstanding the foregoing, if a Qualifying Occupant dies, the remaining Occupants of the Lot may continue to occupy the Lot, provided one Occupant of the lot shall reach fifty-five (55) years of age within the next five (5) years, and provided that such remaining Occupants submit a written request to the Board and the Board confirms in writing that such continued occupancy would not jeopardize compliance of the Community with the requirements of the Fair Housing Acts and the regulations promulgated thereunder. The Board shall be authorized to deny such request if such continued occupancy would jeopardize the Community’s compliance of the Community with the requirements of the Fair Housing Acts and the regulations promulgated thereunder. A Qualifying Occupant may be temporarily absent from the occupied Lot as long as (i) the Lot is not rented or leased to others, (ii) the Qualifying Occupant returns to the

Lot on a periodic basis, and (iii) the Qualifying Occupant remains legally and financially responsible for the upkeep of the Lot.

(b) Minor Children Not Allowed. No Lot shall be occupied by any person under eighteen (18) years of age, except that one (1) person under the age of eighteen (18) may occupy a Lot if the Board of Directors reasonably determines that such occupancy is necessary to provide reasonable accommodation for the health care needs of a disabled or handicapped Occupant who would be unable to continue to reside in the Community without such accommodation. For purposes of this subsection (b) only, a person shall be deemed to occupy a Lot if he or she stays overnight on the Lot more than twenty-one (21) days in any sixty (60) day period or for more than thirty (30) days in any twelve (12) month period.

(c) Age Verification Procedures. The provisions of this subsection are for the purpose of establishing the policies and procedures necessary for the Community to qualify as housing intended for older persons under the Fair Housing Acts, and the regulations promulgated thereunder. The Board of Directors is authorized to adopt from time to time such other policies and procedures which may, in the Board's sole discretion, be necessary in order for the property to meet all of the requirements for such exemption.

(i) In order for the Community to qualify as housing for older persons under the Fair Housing Acts, at least eighty percent (80%) of the Lots must be occupied at all times by one (1) person fifty-five (55) years of age or older. In order for the Association to determine whether that requirement is being met at all times, each Owner shall, within ten (10) days after being requested to do so by the Board of Directors, furnish to the Association a statement signed by the Owner certifying that at least one (1) Occupant of the Owner's Lot is fifty-five (55) years of age or older. In addition, if requested to do so by the Board of Directors, an Owner shall promptly furnish to the Association such reasonable documentary evidence as may be requested by the Association to verify the accuracy of the statement set forth in any certification submitted to the Association by the Owner. Such documentary evidence shall include, but shall not be limited to, a driver's license, birth certificate, passport, immigration card, military identification, or any other state, local, national, or international official document containing a birth date of comparable reliability.

(ii) In the event of any change in the number or identity of persons occupying a Lot as a result of a transfer, sale, gift, lease, sublease, assignment, death, birth, marriage, separation, divorce or otherwise, the Owner of the Lot shall immediately notify the Board of Directors or its designee in writing and provide the Board of Directors or its designee with the names and ages of all Occupants of the Lot and such other information or documentation as the Board of Directors or its designee may reasonably request.

(d) Exceptions Permitted. An Owner, Occupant, or prospective Owner or Occupant, may request in writing that the Board of Directors make an exception to the

requirements of this Section with respect to a Lot and, provided that the granting of such an exception would not jeopardize compliance of the Community with the requirements for housing intended for older persons under the Fair Housing Acts, and the regulations promulgated thereunder, the Board of Directors may, but is not required to, grant such an exception if less than twenty percent (20%) of the total occupied Lots in the Community are then currently occupied by persons all of whom are younger than fifty-five (55) years of age, and:

(i) such Owner, Occupant, or prospective Owner or Occupant, will be fifty-five (55) years of age within five (5) years of the date of the request for said exception;

(ii) such ownership or occupancy is necessary to provide a reasonable accommodation to a disabled or handicapped Owner, Occupant, or prospective Owner or Occupant of a Lot; or

(iii) refusal would result in undue hardship to the Owner, Occupant, or prospective Owner or Occupant, as determined in the sole and exclusive discretion of the Board. Such "undue hardship" as described herein shall include, but not be limited to, an Owner's, Occupant's, or prospective Owner's or Occupant's ability to care for himself or herself.

(e) Lots Excluded from Compliance. In order for the Community to qualify as housing for older persons under the Fair Housing Acts, at least eighty percent (80%) of the Lots must be occupied at all times by one (1) person fifty-five (55) years of age or older. In accordance with the Fair Housing Acts and regulations promulgated thereunder, for purposes of this calculation, Lots occupied solely by either:

(i) a person or persons (and their families residing in the same Lot), who perform(s) substantial duties directly related to management or maintenance of the common areas and whose occupancy, if not meeting the age requirements, is approved by the Board of Directors; or

(ii) an attendant, health care provider or family care provider (and their families residing on the same Lot) needed for the reasonable accommodation of the disability of an Qualifying Occupant and whose occupancy, if not meeting the age requirements, is approved by the Board of Directors, shall not be considered in any manner to determine compliance with the Fair Housing Acts.

(f) Compliance Required for Lease, Sale or Transfer of Lot. Nothing in this section is intended to restrict the ownership or transfer of title to any Lot; however, no Person may occupy any Lot unless the requirements of this Section are met, nor shall any Owner permit occupancy of any Lot in violation of this Section. Owners shall:

(i) clearly disclose to any prospective tenant, purchaser, or other potential Occupant that Lots within the Community are intended to qualify as housing for older persons under the Fair Housings Acts; and

(ii) include in conspicuous type, in any lease or other occupancy agreement or contract of sale relating to such Owner's Lot, which agreements or contracts shall be in writing and signed by the tenant or purchaser, a statement that Lots within the Community are intended to qualify as housing for older persons under the Fair Housings Acts; and, in the case of a lease or other occupancy agreement, that failure to comply with the requirements and restrictions of this Section shall constitute a default under the lease.

8.24.

#### ARTICLE IX. LEASING

9.1. Prohibition. Except as provided herein, the leasing of Lots is hereby prohibited.

9.2. Definition. "Leasing," for purposes of the Declaration, is defined as the regular, exclusive occupancy of a Lot by any person or persons other than the Owner; provided, however, leasing shall not include occupancy by the spouse, child or parent of an Owner and shall not include the occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence.

9.3. General. Any Owner who desires to lease such Owner's Lot may do so only if the Owner has applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Lot provided that such leasing is in strict accordance with the terms of the permit and this Article. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits. All permits shall be valid only as to a specific Lot Owner and Lot and shall not be transferable between either Lots or Lot Owners.

Notwithstanding anything to the contrary herein, short-term rentals, transient tenants, and any other services utilized to temporarily rent Units as accommodations to guests or tenants (for example, Airbnb, VRBO, or other similar services) are expressly prohibited, and such rental arrangements shall be considered an impermissible business activity in violation of the Declaration.

9.4. Leasing Permits. An Owner's request for a Leasing Permit shall be approved if current, outstanding Leasing Permits have not been issued for more than ten percent (10%) of the total number of Lots. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse or a person cohabitating with the Owner, or a corporation, partnership, company, or legal entity in which the Owner is a principal); (2) the failure of a Lot



Owner to lease his or her Lot pursuant to an approved lease within ninety (90) days of the Leasing Permit having been issued; (3) the failure of a Lot Owner to have his or her Lot leased pursuant to an approved lease for any consecutive ninety (90) days period thereafter; or (4) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit.

If current Leasing Permits have been issued for ten percent (10%) of the total number of Lots, no additional Leasing Permits shall be issued (except for Hardship Leasing Permits, as set forth below) until the number of outstanding current Leasing Permits falls below ten percent (10%) of the total number of Lots. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued a Leasing Permit if they so desire when the number of current outstanding Leasing Permits issued falls to less than ten percent (10%) of the total number of Lots. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

9.5. Hardship Leasing Permits. If the failure to lease will result in a hardship, an Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the sole authority to issue or deny requests for Hardship Leasing Permits in its discretion. In making such a determination, the Board may take any factor into account, including: (1) the nature, degree, and likely duration of the hardship, (2) the number of Hardship Leasing Permits which have been issued to other Owners, (3) the Owner's ability to cure the hardship, and (4) whether previous Hardship Leasing Permits have been issued to the Owner. Hardship Leasing Permits shall be valid for a term not to exceed one year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a Leasing Permit.

9.6. Leasing Provisions. Leasing of Lots shall be governed by the following provisions:

(a) Notice. At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the proposed lease and such other information as the Board may reasonably require. The Board may approve or disapprove the form of said lease. In the event a lease form is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease form into compliance with the Declaration, any rules and regulations adopted pursuant thereto, and any criteria determined by the Board. Within ten (10) days from the execution of the lease by both parties, the Owner shall provide the Board with a copy of the executed lease and the names and phone number of the lessees. Nothing contained in this Section shall permit the Board to approve or deny a lessee.

(b) General. Lots may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases unless approved in writing by the Board. All leases shall be for a period of at least one (1) year unless otherwise

approved in writing by the Board. Transient occupancy is prohibited. The Lot Owner must provide the lessee copies of the Declaration, Bylaws, and Association rules and regulations.

(c) Liability for Assessments and Compliance with Declaration, Bylaws, and Rules and Regulations. Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into a lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot under the definition of "leasing" stated herein, agrees to the applicability of this covenant and incorporation of the following language into the lease.

(i) Liability for Assessments. Lessee agrees to be personally obligated for the payment of all assessments and all other charges which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

Additionally, when a Lot Owner who is leasing his or her Lot fails to pay any assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon demand by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the remaining term of the lease and any other period of occupancy by lessee following such demand. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's demand to pay assessments or other charges to the Association, lessee shall be personally obligated to pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required to make such payments to the Association if lessee were the Owner of the premises during the term of the agreement and any other period of occupancy by lessee, and including all amounts paid by lessee to lessor following the date of such demand from the Board.

(ii) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests in order to insure compliance with the foregoing. Lessee acknowledges that the violation by lessee or any occupant living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for

any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule and regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, if a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of the lessee's failure to do so. Unpaid fines shall constitute a lien against the Lot. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by lessee, any occupant, or any person living with lessee is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the irrevocable power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the irrevocable power and authority to evict the lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

9.7. Applicability of this Article. Except as specifically provided herein, this Article shall not apply to any leasing transaction entered into by or on behalf of the Declarant, the Association, or the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, and they shall be permitted to lease without obtaining a permit; provided, however, such leasing by or on behalf of the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage shall comply and be subject to Section 9.6 of this Article.

#### ARTICLE X. MAINTENANCE RESPONSIBILITY

10.1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement of all landscaping, grass areas, private streets, sidewalks, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve only the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies. The Association shall maintain the detention/retention ponds and entry areas that serve the Community. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto.

The Association shall also maintain and keep in good repair all landscaping installed by or on behalf of the Declarant or the Association within the Community, whether located on a Lot or Common Property, which shall consist of and be limited to: (i) mowing, edging, weeding, trimming, and keeping any planting beds in good condition and free of weeds; (ii) maintaining any irrigation system and all components of same; (iii) replacement of any dead vegetation; (iv) replacement of pine straw on a schedule as determined by the Board; and (v) the adjustment and setting of the irrigation system and its automatic timers. Notwithstanding the foregoing, in the event a fence is installed on an Owner's Lot, the Owner of such Lot shall be responsible for the maintenance of all landscaping located within the enclosed Courtyard area attached to the home on a Lot; provided, however, the Association may maintain the landscaping located within such enclosed areas if the Board determines that it would be in the best interest of the Association and Community to do so, and in such event, the Owner shall provide the Association with access to such enclosed courtyard area(s).

The Association shall also maintain a termite treatment bond on each Lot, which shall be paid as common expense, and the Association shall also provide trash service to each Lot in the Community as a common expense.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property or any other area within the Community by an Owner or Occupant which is the Association's responsibility hereunder shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair. Additionally, in the event an Owner or Occupant performs such maintenance or repair, the Association may require the Owner or Occupant to restore such property to substantially the same condition as it existed prior to such maintenance or repair or may fine the Owner or Occupant in accordance with the terms of this Declaration.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Community or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of portion of the Community. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising

from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

If the Board determines that the need for maintenance or repair is in those portions of the Community for which the Association is obligated to maintain and is caused through the actions or inactions of any Owner or Occupant, or his or her family, guests, lessees or invitees, then the Association may assess the cost of any such work against the Owner's Lot.

10.2. Owner's Responsibility. Except as specifically provided in Section 10.1 above, each Owner shall maintain and keep the Owner's Lot and all structures and improvements located thereon in good repair, condition, and order. Without limiting the generality of the foregoing, each Owner is specifically responsible for: (i) all portions of the dwelling located on the Owner's Lot; (ii) all portions of the driveways, walkways, and front walks providing access only to Lot or the dwelling located thereon, whether or not located on the Owner's Lot; (iii) all portions of the heating and air conditioning system serving the Lot, including the compressor and any vents, electrical lines or other pipes or lines related thereto, whether or not located on the Owner's Lot; (iv) any pipe, line, conduit, structure, or other apparatus serving only one (1) Lot, whether or not located on the Owner's Lot; (v) utility boxes serving an Owner's Lot; (vi) any landscaping located within any fenced Courtyard area on a Lot, unless assumed by the Association as provided in Section 10.1 above, and any Courtyard Fence serving the Lot; (vii) any additional landscaping installed by or on behalf of an Owner; and (viii) tree roots, including, but not limited to, tree roots entering into or otherwise affecting a pipe, line, conduit, structure, or other apparatus serving only one (1) Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Each Owner shall perform the Owner's responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners. In performance of such maintenance responsibilities hereunder, the Owner shall comply with all other provisions of this Declaration, including, but not limited to, Article VII of this Declaration. Each Owner shall also have the obligation to promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible to maintain, repair, and/or replace.

10.3. Failure to Maintain. If the Board determines that any Owner has failed or refused to discharge properly the Owner's obligation with regard to the maintenance as provided in this Article, then, except in the case of an emergency as determined in the sole discretion of the Board, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense.

The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board. Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete the maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence

replacement or repair within ten (10) days and diligently pursue completion of such repair or replacement. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided, then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be an assessment and lien against the Owner and the Lot.

If, during the course of performing the maintenance of an Owner's Lot, the Association discovers that maintenance, repair, or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair, or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's expense without prior notice to the Owner.

In the event the Board exercises such self-help as provided herein, and in the event further self-help based upon the same or a substantially similar violation is deemed necessary by the Board within the following six (6) months, the Board may exercise such self-help without further notice to the Owner, and all costs shall be an assessment and lien against the Owner and the Lot.

The Board may alternatively enforce this Article through monetary fines against the Owner or Occupant of the Lot, and each day the maintenance, repair, or replacement is not completed shall constitute a separate violation for which fines may be assessed on a daily basis.

10.4. Maintenance Standards and Interpretation. The Board of Directors, in its discretion, may determine schedules of maintenance and repair for the Common Property, and may do so based on the availability of funds for performance of such projects. The Board shall attempt to determine and prioritize schedules based on its opinion of severity of damage and need for corrective work or maintenance. Maintenance and repairs which are part of the Association's responsibility need not be made upon Owner request if, in the Board's discretion, an emergency condition does not exist and such maintenance or repair is included or is to be included within the Board's schedule of maintenance or repairs.

The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

#### ARTICLE XI. EASEMENTS

11.1. Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to the Owner's Lot, subject to the following provisions:

(a) 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 Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, the Owner's family, tenants, guests, and invitees;

(b) the right of the Association, acting through the Board, to make and to enforce reasonable rules and regulations governing the use of the Common Property;

(c) the terms and conditions of this Declaration, the Bylaws, and the rules and regulations of the Association;

(d) the right of the Association to suspend the right of an Owner to use the recreational facilities in the Community, if any, for any period during which any assessment against the Owner or Owner's Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations, and to suspend and vehicular access privileges pursuant to Article VI, Section 6.11(g) of this Declaration;

(e) the right of the Association to borrow money as may be set forth in the Bylaws; provided, however, the lien and encumbrance of any such mortgage given by the Association against the Common Property shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for any Lot or Lot Owner; and

(f) the right of the Association to grant permits, licenses, or easements across the Common Property.

Any Lot Owner may delegate the Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of the Owner's family, or to the Owner's tenants and guests, and shall be deemed to have made a delegation of all such rights to the Occupants of the Owner's Lot if leased.

11.2. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to trees or the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than two (2) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point.

11.3. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving

the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association may have installed to serve the Community. It shall be expressly permissible for the Declarant or the Association to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board on behalf of the Association shall have the right to grant such easement. Nothing contained in this Section shall require or obligate the Declarant or the Association to maintain such easement areas, or any facilities or improvements located therein or thereon.

11.4. Easement for Entry. The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Community, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any violation of the Declaration, Bylaws, or rules and regulations of the Association and any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board. No entry into a dwelling shall be permitted without the expressed consent of the Owner. Nothing contained in this Section shall require the Association to enter onto any Lot for emergency, security, safety, or for other purposes.

11.5. Easement for Construction and Sales. So long as the Declarant owns any property described in Exhibit "A" or Exhibit "B" for development or sale or has the right to unilaterally annex additional property to this Declaration, the Declarant reserves an easement across the Community for Declarant and any approved Builder by Declarant to maintain and carry on development activities upon such portion of the Community as Declarant may reasonably deem necessary. This easement shall include an easement for such facilities and activities which in the sole opinion of Declarant may be required, convenient, or incidental to the development, construction, and sales activities related to the property in or near the Community. This easement shall include, without limitation, the following:

(a) The right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of the Community as well as upon any Lot in the Community;

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



(c) The right to tie into or otherwise connect and use (without a tap-on or other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar services;

(d) The right to place directional or marketing signs on any portion of the Community, including upon any Lot or the Common Property; and

(e) The right to construct and operate business offices, signs, construction trailers, model homes, and sales offices incidental to its construction, development and sales activities.

The Declarant shall not be required to obtain the approval or consent of the Association, the Board, the ACC, or any director, officer, or member of same, to exercise any right granted to it pursuant to this Section.

11.6. Easement for Entrance Sign and Landscaping. The Association shall have an easement over any portion of a Lot on which any entrance feature, including, but not limited to, the Community sign, fencing and landscaping, are located. Such entrance features shall remain the personal property of the Association. The Association shall be solely liable for the maintenance, repair and/or replacement of the entrance features, fencing, landscaping, and annual flowers. The Association shall additionally have an easement for the installation and maintenance of utility and water lines across the Lot to the entrance features.

11.7. Fence Easement. Declarant hereby reserves an easement to itself and the Association across any Lot which borders the perimeter of the Community and any Lot that borders or contains a portion of any water facility, detention pond, or retention pond for the purpose of erecting a fence. The Owner of a Lot on which any portion of a fence is located shall be responsible for the maintenance and repair of the fence as part of the Owner's maintenance obligations; provided, however, the Declarant or the Association may, but is not obligated to, repair and maintain any fence installed by or on the behalf of the Declarant. Nothing contained in this Section shall require the Declarant or the Association to install any fence.

11.8. Drainage Easement. Declarant shall have an easement across the Community for the purpose of altering drainage and water flow across any property in the Community, including the Lots. This right shall include altering swales, installing drains, drainage ditches, pipes, inlets, and alerting, channeling, or piping waterflow. Rights exercised pursuant to this easement shall be exercised with a minimum interference to the quiet enjoyment of affected properties.

11.9. Courtyard Easement Area. Declarant, as the owner of all of the property in the Community, hereby reserves for the benefit of the Lots, as identified on the plats for the Community recorded from time to time in the Cherokee County, Georgia land records, an easement for access, ingress, egress, use and enjoyment across the Courtyard area adjacent to,

serving, and exclusively benefiting a Lot having access to said Courtyard area from the dwelling located on such Lot. Each Owner of a Lot which is benefitted by a Courtyard area acknowledges that the exterior wall enclosing the Courtyard which is farthest from the dwelling located on the benefitted Lot is the exterior wall of a dwelling constructed on a neighboring Lot (hereinafter the "Neighbor's Wall). Such Courtyard area may be used and enjoyed exclusively by the Owner of such benefitted Lot in any manner and for any purpose permitted by this Declaration, including such purposes as landscaping and general recreation. Provided, however, each Owner shall comply with the terms of this Declaration and any rules and regulations adopted by the Board of Directors regarding the use of a Courtyard, and further provided, no Owner of a benefitted Lot shall: (a) make any modification, alteration, addition, or improvement to the Neighbor's Wall; (b) plant any tree, shrub or other vegetation within the Courtyard area whose roots could negatively impact the dwelling or dwelling foundation on the adjacent Lot, water line, or sewage line, or cause any damage to the Neighbor's Wall; (c) operate a grill within ten (10) feet of a Neighbor's Wall; (d) throw any ball or object of any kind or spray any substance against a Neighbor's Wall; (e) intentionally cause any damage to the Neighbor's Wall; (f) erect any structure or place any object which would interfere with the easement rights of any adjacent Lot; (g) install additional concrete within such Courtyard area without architectural approval as provided in Article VII of this Declaration; (h) install pavers within three (3) feet of the Neighbor's Wall; or (i) play loud music or make loud noises within the Courtyard area which might disturb the quiet enjoyment rights of an Owner or Occupant of the adjacent Lot. At all times, a 2 ½ foot buffer area shall be preserved adjacent to the Neighbor's Wall to allow access for maintenance of the Neighbor's Wall and dwelling, and no plantings or other items shall be placed in such buffer area. The Board of Directors of the Association may adopt additional ruled and regulations governing the use of the Courtyard, and the easement rights granted herein shall be subject to such rules and regulations. Such rights shall be appurtenant to and run with title to such benefitted Lot for the benefit of the Owner of said Lot, but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such benefitted Lot.

## ARTICLE XII. SALE OF LOTS

12.1. Grantor's Obligation for Notice. A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This Article shall not be construed to create a right of first refusal in the Association or in any third party.

12.2. Grantee's Obligation for Notice. Within seven (7) days after receiving title to a Lot, the grantee of the Lot shall give the Board written notice of such ownership of the Lot. Upon failure of an Owner to give the required notice within the seven (7) day period provided herein, the Board may levy a fine against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining the Owner's identity.

ARTICLE XIII. INSURANCE

13.1. Hazard Insurance on Common Property. The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. The insurance shall include fire and extended coverage, including coverage for 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.

13.2. Liability Insurance and Directors' and Officers' Liability Insurance. 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 in their capacities as such, 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.

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

13.4. Policy Terms. All such insurance coverage obtained by the Board shall be written in the name of the Association. Such insurance shall be governed by the following provisions:

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

(b) All policies on the Common Property shall be for the benefit of the Association and its members.

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

(d) In no event shall the insurance coverage obtained and maintained by the Board 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.

(e) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies should be reviewed annually by one or more qualified persons.

(f) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

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

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

(3) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners, and a provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal due to any defect or conduct of any director, officer, or agent 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 for the required cure to be performed;

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

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

13.5. Individual Lot Owner Insurance. Each Owner shall carry blanket all-risk casualty insurance, if reasonably available, or if not reasonably available, fire and extended coverage, on the Owner's Lot and structures constructed thereon meeting the same requirements as set forth in this Article for insurance on the Common Property. Each Owner further covenants and agrees that, in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds.

#### ARTICLE XIV. REPAIR AND RECONSTRUCTION

14.1. Common Property. In the event of damage to or destruction of all or any part of the Common Property insured by the Association as a result of fire or other casualty, unless eighty percent (80%) of the Lot Owners vote not to proceed with the reconstruction and repair of the all or any portion of the Common Property, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the damaged part of the Common Property.

14.2. Cost Estimates. As soon as reasonably practical after a fire or other casualty causing damage to the Common Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Lot) to substantially the

condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

14.3. Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Article VI, Section 6.7 above. If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

#### ARTICLE XV. MORTGAGEE'S RIGHTS

15.1. Foreclosure. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the first Mortgage, it shall not be liable for assessments or charges by the Association chargeable to such Lot which became due prior to such acquisition of title. Such acquirer shall be responsible for all charges accruing subsequent to the passage of title.

15.2. Eligible Mortgage Holder. A Mortgage Holder shall become an Eligible Mortgage Holder if the Mortgage Holder provides to the Association in writing its name, address, and phone number, as well as the address of the Lot and name of the Lot Owner to which it holds a Mortgage; provided, however, a settlement statement (HUD-1) from a closing shall not be sufficient information to enable a Mortgage Holder to become an Eligible Mortgage Holder. Upon becoming an Eligible Mortgage Holder, an Eligible Mortgage Holder shall be entitled to timely written notice of the following:

(a) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Owner of any other obligation under this Declaration which is not cured within sixty (60) days; or

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

15.3. Financial Statement. Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

15.4. Non-Impairment. Notwithstanding anything to the contrary herein contained, the provisions of this Declaration governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

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

15.6. HUD/VA Approval. As long as the Declarant has the right to appoint and remove directors and officers of the Association, the following items shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either agency is insuring or guaranteeing the Mortgage on any Lot: (i) Mortgage consolidation, (ii) dissolution of the Association, (iii) annexation of property other than the Additional Property on Exhibit "B," (iv) dedication or conveyance of the Common Property to any party other than the Association, or mortgaging the Common Property; or (v) any material amendment to the Declaration or Bylaws.

#### ARTICLE XVI. AMENDMENTS

16.1. General. Subject to Section 17.2 of this Article, this Declaration may be amended by an instrument or instruments signed by at least two-thirds (2/3) of Owners. Notice of a meeting, if any, at which a proposed amendment will be considered, shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and filed in Cherokee County, Georgia land records.

16.2. Approval of Declarant. Until the date on which one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed from Declarant to any other Person, any amendment to the Declaration or Bylaws must be approved in writing by the Declarant prior to becoming effective; and during such time, Declarant shall have the unilateral right to amend the Declaration from time to time without the approval of the Association members.

16.3. Georgia Property Owners' Association Act. The majority of the Board of Directors, without the approval of the Association members, may record an amendment to submit the Declaration to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq.; provided, however, such amendment must be approved by the Declarant, if the Declarant than owns any Lot subject to this Declaration.

16.4. Limitation Period. Any action to challenge the validity of this Declaration or an amendment adopted under this Article must be brought within one (1) year of the recording of same in the Cherokee County, Georgia land records. No action to challenge this Declaration or any such amendment may be brought after such time.

ARTICLE XVII. GENERAL PROVISIONS

17.1. Enforcement. In addition to any other enforcement right set forth within the Declaration or Bylaws, the Association, acting through the Board of Directors, shall have the right to enforce, in its sole discretion, any violation of the Declaration, Bylaws or rules and regulations of the Association by a proceeding at law or in equity, or as otherwise provided herein. Failure of the Board of Directors to exercise its authority to take enforcement action authorized by the Declaration, Bylaws or rules and regulations of the Association shall not be grounds for any action against the Association or the Board of Directors. Owners may enforce the Declaration against other Owners by a proceeding at law or in equity.

(a) Fines and Suspensions of Use. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, for any violation of the Declaration, Bylaws, or any Association rules and regulations. The Board shall further have the power to suspend the use of the recreational facilities, if any, for any violation of the Declaration, Bylaws, or any Association rules and regulations. If any Occupant violates the Declaration, Bylaws or Association rules and regulations and a fine is imposed, the fine may be imposed against the Owner and/or Occupant. The Board may establish and promulgate a fining schedule. The Board shall not impose a fine or suspend the right to use the recreational facilities, unless and until the Board has sent or delivered written notice to the Owner or Occupant as provided herein; provided, however, A Owner's right to use the recreational facilities shall automatically be suspended without notice during any period in which an Owner is more than thirty (30) days delinquent on any assessment or charge, and the Owner shall be ineligible to use the recreational facilities until the Owner's account balance has been paid in full.

(i) Notice. If any provision of the Declaration or Bylaws or any Association rule or regulation is violated, the Board shall send the violating Owner or Occupant written notice identifying the violation and fine and/or suspension being imposed and advising the Owner or Occupant of the right to request a hearing before the Board to contest the violation or the fine and/or suspension or to request reconsideration of the fine and/or suspension. Fines and suspensions may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the Owner or Occupant's right to request a hearing before the Board to challenge the fine and/or suspension. 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 Owner or Occupant. In the event an Owner or Occupant violates the same provision of the Declaration or Bylaws or any Association rule and regulation within six (6) months from the date of the notice, the Board may impose the fines and/or other sanction provided in the notice without further notice to the Owner or Occupant.

(ii) Hearing. If a written request for a hearing is received from the Owner or Occupant 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 Owner or Occupant

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. Failure to request a timely hearing as provided herein shall result in loss of the right to challenge and request reconsideration of the fines or suspension. The Board of Directors may, but shall not be required to, suspend the fines and/or suspension until the date of the hearing.

(b) Suspension of Voting. A member's right to vote shall automatically be suspended during any period in which a member is more than thirty (30) days delinquent on any assessment or charge or during any period in which the member is in violation of the Declaration. The Association shall not be required to provide any notice to such member that the member's voting rights have been automatically suspended.

(c) Abatement and Self-Help. The Board or its designee may enter upon a Lot to exercise self-help in order to remove or abate any violation thereon of the Declaration; provided, however, the Board shall first provide the Owner of the Lot ten (10) days notice of the Board's intention to enter the Owner's Lot and provide the Owner with an opportunity to remove or abate the violation, provided further, such notice shall not be required if the Board determines that an emergency exists. All costs of self-help or of otherwise enforcing the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred, shall be assessed against the Owner, Occupant and/or Lot subject to the violation.

(d) Notice of Violation. The Association shall have the authority to record in the Cherokee County, Georgia land records a notice of violation identifying an uncured violation of the Declaration, Bylaws, or rules and regulations regarding a Lot.

(e) Enforcement Costs. The Owner or Occupant responsible for a violation shall be liable for all costs incurred in enforcement, including reasonable attorney's fees actually incurred, whether or not a legal proceeding in law or equity is filed in connection with the violation. In the event an Occupant is responsible for the violation, the Owner shall also be liable for all costs incurred in enforcement against such Occupant, including reasonable attorney's fees actually incurred, whether or not a legal proceeding in law or equity is filed in connection with the violation. All such costs shall be considered a specific assessment and shall become a lien against the Owner's Lot.

(f) Waiver. 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. Neither the Declarant, the Association, its Board of Directors, any duly created committee, any member of any of the foregoing, the Association's officers, nor agents shall have any liability of any kind as a result of any failure to enforce any provision contained in this Declaration. Each Owner acknowledges and agrees that the Association has the discretion to pursue covenant violations based on the gravity of the violation, the strength of the Association's legal and factual position, and the Association's financial position. The Association's decision



regarding any specific covenant violation shall not affect the rights of other Owners with respect to that violation.

17.2. Duration. The Covenants and Restrictions within the Declaration shall run with and bind the property subject to this Declaration perpetually or as otherwise provided by Georgia law.

17.3. SECURITY. THE ASSOCIATION MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SAFETY AT THE COMMUNITY; HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION IS NOT A PROVIDER OF SECURITY AND SHALL HAVE NO DUTY TO PROVIDE SECURITY AT THE COMMUNITY. 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 LOT OWNER.

THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SAFETY MEASURES UNDERTAKEN.

17.4. Dispute Resolution. Any Lot Owner or Occupant must give written notice to the Declarant or Board requesting a hearing with the Declarant or Board and attend such hearing to discuss amicable resolution of any dispute against the Declarant or Association, respectively, before that Owner or Occupant files any lawsuit against the Declarant, the Association, the Board, or any officer or director, or any agent of same. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance and resolve the dispute in an amicable fashion, and shall give the Declarant or Association a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Declarant or Association shall give notice of the date, time, and place of the hearing to the Person requesting the hearing. The Declarant or Association shall schedule the hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the Person requesting the hearing. Alternatively, the Board may notify the Owner or Occupant that it is waiving the requirement of the Owner or Occupant to request and attend the hearing with the Board.

17.5. Limitation on Litigation. Except as provided in this Section 18.5, the Association shall not commence a judicial or administrative proceeding without the approval of Owners representing at least 75% of the total votes in the Association. This Section 18.5 shall not apply, however, to (a) actions brought by the Association to enforce the Declaration, Bylaws or rules and regulations of the Association (including, without limitation, the foreclosure of liens); (b) the

collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section 18.5 shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

17.6. No Discrimination. No action shall be taken by the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status, or handicap.

17.7. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

17.8. Eminent Domain. If all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five percent (75%) of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining Common Property to the extent land is available therefor.

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

17.10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision, which shall remain in full force and effect.

17.11. Conflicts. The duties, powers, and obligations of the Association, including the members, directors, and officers, shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, the Bylaws, the Articles of Incorporation, and the rules and regulations of the Association. If there are conflicts or inconsistencies between such, then the provisions of the Georgia Nonprofit Corporation Code, the Declaration, the Bylaws, the Articles of Incorporation, and the rules and regulations of the Association, in that order, shall prevail; and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

17.12. Preparer. This Declaration was prepared by David C. Boy, IV, Lueder, Larkin & Hunter, LLC, 5900 Windward Parkway, Suite 390, Alpharetta, Georgia 30005.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 20<sup>th</sup> day of January, 2022.

DECLARANT:

OWENBY DEVELOPMENT, LLC, a  
Georgia Limited Liability Company

By: [Signature] (Seal)  
Name: JEFF GIBBS  
Title: L.A.M.

Signed, sealed and delivered  
in the presence of:

Witness: [Signature]

[Signature]  
Notary Public

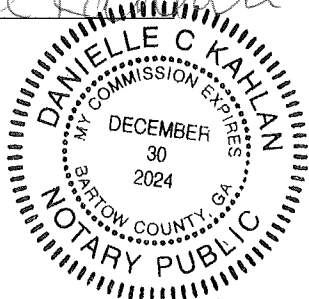


EXHIBIT "A"

Legal Description of Land Submitted to the Declaration

A tract or parcel of land situated in Land Lot 889, 15<sup>th</sup> District, 2<sup>nd</sup> Section, Cherokee County, Georgia, the bearings of which are based on State Plane Grid System (Georgia West Zone) and being more particularly described as follows:

Commence at the northerly mitered intersection of the easterly right of way of Trickum Road (Variable R/W) and the southerly right of way of Arnold Mill Road (50' R/W) and having State Plane Coordinates of N- 1,498,220.8, E-2,204,915.3; thence along the southerly right of way of Arnold Mill Road the following 2 courses and distances: [S87°05'39"E for a distance of 67.34 feet; S86°39'15"E for a distance of 119.46 feet] to the intersection of said line with the property of Cherokee Christian School Tax Parcel 15 N 23 043A; and the **Point of Beginning** of said tract; thence continuing along said southerly right of way the following 3 courses and distances: [S87°05'53"E for a distance of 55.68 feet; S86°12'23"E for a distance of 273.06 feet; Easterly 247.30 feet along the arc of a curve, concave to the South, having a central angle of 03°47'43", a radius of 3,733.40 feet, and a chord bearing and distance of S84°18'32"E and 247.26 feet] to a # 5 rebar to the intersection of said line with the easterly line of Land Lot 889 and the westerly line of Farmington IV Subdivision as recorded in plat book 52 page 86 of Cherokee County, Georgia records; thence along said land lot line, S00°20'07"W for a distance of 669.70 feet; thence leaving said land lot line, N89°24'07"W for a distance of 661.16 feet to a # 4 rebar w/cap at the intersection of said line with the property of Tax Parcel 15 N 23 043; thence along said line, N89°28'39"W for a distance of 308.21 feet to a # 4 rebar at the intersection of said line with the easterly right of way of Trickum Road (Variable R/W); thence along said right of way, Northerly 512.67 feet along the arc of a curve, concave to the West, having a central angle of 10°06'44", a radius of 2,904.79 feet, and a chord bearing and distance of N12°09'40"E and 512.01 feet to a P-K nail at the intersection of said line with the property of Georgia-Alabama Commercial Investments, LLC; thence leaving said right of way and along said line, S86°39'15"E for a distance of 278.82 feet to a # 4 rebar; thence N03°20'45"E for a distance of 221.51 feet to the **Point of Beginning** of said tract.

Containing 12.97 acres or 565,013 square feet being more specifically shown on an ALTA / NSPS Land Title Boundary Survey prepared for Wintergreen Development, LLC; Cherokee Christian Schools, Inc.; First American Title Insurance Company; Owenby Development, LLC; and The Piedmont Bank, by Mitchell Surveying & Consulting, LLC, dated: May 14, 2020, (Job No. 19082.00), unto which reference is hereby made.

TOGETHER WITH the rights contained in that certain Easement Agreement by and among Cherokee Christian Schools, Inc. and Owenby Development, LLC dated 01/23/2021, recorded in Deed Book 14509, Page 451, aforesaid records.

EXHIBIT "B"

Additional Property

Any property located within one (1) mile radius from any property included in Exhibit "A" of this Declaration.

Rec: \$25.00

Patty Baker, Clerk of Superior Court - Cherokee County, GA

ParticipantIDs: 2028400475 SubmitterID: 0848497841

**EXHIBIT "C"**

**BYLAWS**

**OF**

**OWENBY HOMEOWNERS ASSOCIATION, INC.**



**LUEDER, LARKIN & HUNTER, LLC**  
ATTORNEYS AT LAW

5900 Windward Parkway, Suite 390

Alpharetta, Georgia 30005

770-685-7000

*www.luederlaw.com*

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**BYLAWS**  
**OF**  
**OWENBY HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I. GENERAL

1.1. Applicability. These Bylaws provide for the self-government of Owenby Homeowners Association, Inc., in accordance with the Articles of Incorporation filed with the Secretary of State and the Declaration of Covenants, Conditions, Restrictions, and Easements for Owenby (hereafter referred to as the "Declaration"), recorded in the Cherokee County, Georgia land records.

1.2. Name. The name of the corporation is Owenby Homeowners Association, Inc. (hereafter referred to as the "Association").

1.3. Definitions. The terms used herein shall have their generally accepted meanings or the meanings specified in Article I of the Declaration.

1.4. Membership. Every Owner shall be deemed to have a membership in the Association. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, 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 owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in the Declaration and in these Bylaws. Membership shall be appurtenant to 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 or more than one (1) office held for each Lot owned.

1.5. Voting. Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it. A member's right to vote shall automatically be suspended during any period in which a member is more than thirty (30) days delinquent on any assessment or charge, and the member shall be ineligible to vote on any matter until the member's account balance has been paid in full.

1.6. Entity Members. In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such

partnership, beneficiary, or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Owner of the Lot. The membership rights of an Owner which is a corporation, partnership, or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

1.7. Purpose. In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary, or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Owner of the Lot. The membership rights of an Owner which is a corporation, partnership, or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

1.8. Electronic Communications.

(a) Records and Signatures. Whenever the Declaration or these Bylaws require that a document, record or instrument be written or in writing, the requirement is deemed satisfied by an electronic record pursuant to the Georgia Uniform Electronic Transactions Act. Whenever the Declaration or these Bylaws require a signature on a document, record or instrument, an electronic signature, in accordance with the Georgia Electronic Records and Signatures Act, satisfies that requirement.

(b) Verification and Liability for Falsification. The Board of Directors may require reasonable verification of any electronic signature, document, record, or instrument. Absent or pending verification, the Board of Directors may refuse to accept any electronic signature or electronic record that, in the Board's sole discretion, is not authentic. Neither the Board of Directors nor the Association shall be liable to any Owner or any other Person for accepting or acting in reliance upon an electronic signature or electronic record that the Board of Directors reasonably believes to be authentic, or rejecting any such item which the Board of Directors reasonably believes not to be authentic. Any Owner or Person who negligently, recklessly or intentionally submits any falsified electronic record or unauthorized electronic signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees actually incurred and expenses incurred as a result of such acts.

ARTICLE II. MEETINGS OF MEMBERS

2.1. Annual Meetings. The annual meeting of the members shall be held each year with the date, hour, and place to be set by the Board.

2.2. Special Meetings. Special meetings of the members may be called for any purpose at any time by the President or by request of any two (2) or more directors, or upon written petition of at least twenty-five (25%) percent of the total eligible vote of the Association membership. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit the petition to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition, and the Secretary shall send notice of the meeting in accordance with these Bylaws. Members petitioning for a special meeting may request the date, time and location of the meeting, but such request shall not be binding upon the Association.

2.3. Notice of Meetings. The Secretary shall mail or deliver to each member of the Association a notice of each Association meeting at least twenty-one (21) days prior to each annual meeting and at least ten (10) days prior to each special meeting. All notices shall state the date, time, and location of the annual or special meeting. If any member wishes notice to be given to an address other than the Owner's Lot address, the member shall designate such other address by written notice to the Secretary. The mailing or delivering of a meeting notice as provided in this Section shall constitute proper service of notice.

2.4. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any Association meeting, either before or after such meeting. Attendance at a meeting by a member, whether in person or represented by proxy, shall be deemed waiver by such member of notice of the date, time and location thereof unless such member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

2.5. Quorum. The presence, in person or by proxy, of members entitled to cast fifteen percent (15%) of the total eligible vote of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is closed and shall not need to be reestablished. Members whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the quorum requirement.

2.6. Adjournment. Any meeting of the Association members may be adjourned from time to time for periods not exceeding ten (10) days by vote of the members holding the majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could have been transacted properly at the original session of the meeting with a quorum present may be transacted at a reconvened session with a quorum present, and no additional notice of such reconvened session shall be required.

2.7. Proxy. Any Association member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid.

The term "proxy" shall mean the written document in which the member authorizes any other person to attend a membership meeting on behalf of the member and vote the member's vote at the meeting. The written proxy document shall not be required to be in any particular form; but to be valid, the proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. The member giving the proxy shall be the "proxy giver" and the person holding the proxy and authorized to attend on behalf of the proxy giver and vote for the proxy giver shall be the "proxy holder." Proxies may be delivered by either the proxy giver or the proxy holder by personal delivery, U.S. Mail, facsimile transmission, email, or other electronic means to any Board member or the property manager, if any. Proxies may be revoked only by written notice of the proxy giver delivered to the Secretary, except that the presence in person by the proxy giver at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy. Proxies shall be counted towards establishment of a quorum.

2.8. Action Taken Without a Meeting. In the Board's discretion, any action that may be taken by the Association members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every member entitled to vote on the matter.

(a) Ballot. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when (1) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and (2) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballot in its file for at least three (3) years.

(b) Written Consent. Approval by written consent shall be valid only when the number of written consents received equals or exceeds the requisite majority of the voting power for such action. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the members is approved by written consent hereunder, the Board shall issue written notice of such approval to all members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration or Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

2.9. Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these Bylaws or the Articles of Incorporation, unless the members present at a particular meeting vote to suspend Robert's Rules at that meeting.

### ARTICLE III. BOARD OF DIRECTORS

#### 3.1. Composition.

The affairs of the Association shall be governed by a Board of Directors composed of three (3) persons; provided, however, during the period of time that Declarant has the right to appoint and remove the directors and officers of the Association pursuant to Section 3.2 of this Article, the Board of Directors shall be composed of one (1) to three (3) persons as determined by the Declarant. Except for directors appointed by the Declarant hereunder, the directors shall be Owners of Lots or the spouse of an Owner; provided, however no Owner and his or her spouse may serve on the Board at the same time, and no co-owners may serve on the Board at the same time.

#### 3.2. Election and Term.

The Declarant shall have the right to appoint and remove directors and officers of the Association until the earlier of the following to occur: (a) the date on which one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed to any Person not constituting the Declarant for residential use; or (b) the voluntary surrender by Declarant, in writing, of the authority to appoint and remove the Association's directors and officers. In the event the Declarant voluntarily surrenders the authority to appoint and remove the Association's directors and officers, the Declarant shall thereafter retain the right to veto any action of the Board of Directors until the date on which one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed to any Person not constituting the Declarant for residential use.

Upon the termination of the Declarant's right to appoint and remove directors, all Association members eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. Those natural persons receiving the most votes shall be elected to the number of positions on the Board to be filled. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. There shall be no cumulative voting. Voting for election of Board members shall be by secret written ballot (unless dispensed by unanimous consent at the meeting at which such voting is conducted). All directors shall be elected for one (1) year terms and shall hold office until their successors are elected. The newly elected Board shall meet within ten (10) days following the meeting at which the election occurred for the purpose of appointing officers and any other business that comes before the Board.

3.3. Nomination. Nomination for election to the Board shall be made from the floor at the meeting. Nominations also may be made by a nominating committee, if

appointed by the Board. The Board may also establish additional procedures for the nomination of directors.

3.4. Removal of Directors. At any valid regular or special Association meeting, any one or more directors, except those directors appointed by the Declarant, may be removed with or without cause by a majority of the total eligible vote of the Association members and a successor may then and there be elected to fill the vacancy created. In addition, any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than sixty (60) days past due in the payment of any assessment or charge may be removed by the vote of a majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and shall be given an opportunity to be heard at the meeting.

3.5. Vacancies. Vacancies on the Board caused by any reason, except the removal of a director by vote of the membership as provided in Section 3.4 of this Article, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any Board meeting. The successor selected shall hold office for the remainder of the term of the director being replaced.

3.6. Compensation. Directors shall not be compensated for services. However, directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon Board approval of such expenses. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed not to exceed a value of \$100.00 per calendar year. For purposes hereof, reasonable food and beverages purchased for Board meetings shall not be considered compensation.

3.7. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided the director's interest is disclosed to the Board and the contract is approved by a majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at the meeting at which the proposed contract is discussed, but the director must leave the room during the discussion on such matter.

3.8. Regular Meetings. Regular Board meetings may be held at such time and place as determined by the Board, but at least once every three (3) months.

3.9. Special Meetings. Special Board meetings may be called by the President on three (3) days notice to each director given by mail, in person, by telephone, by facsimile transmission, or by email, which notice shall state the time, date, location, and purpose of the meeting. Special Board meetings shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice upon the written request of at least two (2) directors.

3.10. Waiver of Notice. Any director at any time, in writing, may waive notice of any Board meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any Board meeting shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

3.11. Quorum and Conduct of Meetings. The President shall preside over all Board meetings, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. The presence of directors entitled to cast a majority of the votes of the Board shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

3.12. Open Meetings. All Board meetings shall be open to all Association members, but members other than directors may not participate in any discussion or deliberation unless expressly authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, delinquent assessments, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.13. Action Without a Meeting. Any Board action required or permitted to be taken at any meeting may be taken without a meeting if a majority of the directors consent in writing to such action. The written consents must describe the action taken. The written consents shall be filed with the minutes of the Board. The written consent may be by email or other electronic means; a copy of the consents shall be printed and filed with the minutes of the Board.

3.14. Powers and Duties. The Board shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Community and may do all such acts and things as are not by the Act, the Declaration, the Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws, the Board shall have the power to and shall be responsible for the following, in the way of explanation, but not limitation:

(a) preparation and adoption of an annual budget, in which there shall be established the contribution of each Owner to the common expenses;

(b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments;

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

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair and replacement of the Common Area, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. Section 14-3-302, and using the proceeds to administer the Association;

(f) making and amending rules and regulations for the Community and imposing sanctions for violation thereof, including reasonable monetary fines;

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

(h) making or contracting for the making of repairs, additions and improvements to, or alterations of, the Common Area after damage or destruction by fire or other casualty, in accordance with the other provisions of the Declaration and these Bylaws;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(m) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into management agreements. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

3.15. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize.



3.16. Borrowing. The Board shall have the power to borrow money for the purpose of maintenance, repair, restoration or improvement to the Common Area or for any other purpose; provided, however, if the total amount of such borrowing exceeds or would exceed Fifty Thousand Dollars (\$50,000.00) of outstanding debt at any one time, such borrowing must first be approved by members of the Association holding a majority of the total Association vote; provided further, however, the Board shall be authorized to borrow money from the Declarant as provided in Article VI, Section 6.10 of the Declaration without the approval of the members of the Association.

3.17. Liability and Indemnification of Officers and Directors. The Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

#### ARTICLE IV. OFFICERS

4.1. Designation. The principal officers of the Association shall be the President, Vice President, Secretary, and Treasurer. The President, Vice President and Secretary must be directors. The Treasurer shall be elected by the Board, but need not be a director. The Board may appoint one or more Assistant Treasurers, Assistant Secretaries, and such other subordinate officers as in its judgment may be necessary. Any assistant or subordinate officers shall not be required to be directors. Except for the offices of Secretary and Treasurer and all offices appointed by Declarant, which may be held by the same person, no person may hold more than one (1) office.

4.2. Appointment of Officers. The Declarant shall have the right to appoint and remove directors and officers of the Association until the earlier of the following to occur: (a) the date on which one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed to any Person not constituting the Declarant for residential use; or (b) the voluntary surrender by Declarant, in writing, of the authority to appoint and remove the Association's directors and officers. Upon the termination of the Declarant's right to appoint and remove officers, the Association officers shall be appointed annually by the Board of Directors at the first meeting of the Board

following each annual meeting of the members and shall hold office at the pleasure of the Board and until a successor is elected.

4.3. Removal of Officers. During the period that the Declarant has the right to appoint and remove the officers of the Association, any officer may be removed, either with or without cause, and a successor may be appointed by the Declarant. After the termination of the Declarant's right to appoint and remove officers of the Association as provided herein, upon the affirmative vote of a majority of the Board members at any Board meeting at which a quorum is established, any officer may be removed, either with or without cause, and a successor may be elected.

4.4. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.5. President. The President shall be the chief executive officer of the Association and shall preside at all Association and Board meetings.

4.6. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

4.7. Secretary. The Secretary shall keep the minutes of all Association and Board meetings and shall have charge of the Association's books and records.

4.8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board.

4.9. Other Officers. Other offices may be created by the Board, and the Board members which hold such offices shall have such titles and duties as are defined by the Board.

4.10. Agreements, Contracts, Deeds, Leases, Etc. All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

## ARTICLE V. AMENDMENTS

5.1. General. Subject to Section 5.2 of this Article, these Bylaws may be amended by an instrument or instruments signed by at least two-thirds (2/3) of Owners. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be

effective until certified by the President and Secretary of the Association and filed in Cherokee County, Georgia land records.

5.2. Approval by Declarant. Until the date on which one hundred percent (100%) of the Lots shown on the final recorded plat or plats for the Community have been conveyed from Declarant to any other Person, any amendment to these Bylaws must be approved in writing by the Declarant prior to becoming effective; and during such time, Declarant shall have the unilateral right to amend these Bylaws from time to time without the approval of the Association members.

5.3. Georgia Property Owners' Association Act. The majority of the Board of Directors, without the approval of the Association members, may record an amendment to submit the Declaration and these Bylaws to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq.; provided, however, such amendment must be approved by the Declarant, if the Declarant then owns any Lot subject to the Declaration.

5.4. Limitation Period. Any action to challenge the validity of these Bylaws or an amendment adopted under this Article must be brought within one (1) year of the recording of same in the Cherokee County, Georgia land records. No action to challenge these Bylaws or any such amendment may be brought after such time.

#### ARTICLE VI. MISCELLANEOUS

6.1. Committees. The Architectural Control Committee shall be a standing committee of the Association as provided in the Declaration. The Board may establish a nominating committee and any other committee as the Board deems desirable with the powers and duties that the Board shall authorize. Except as otherwise provided herein and in the Declaration, members of any committee shall be appointed by the Board and shall serve at the pleasure of the Board. Any committee member may be removed with or without cause at any time and with or without a successor being named.

#### 6.2. Notices.

(a) Method of Giving Notice. All notices, demands, bills, statements, or other communications shall be in writing and shall be given:

- (1) Personal delivery to the addressee;
- (2) Via United States mail, first class, postage prepaid;
- (3) Via electronic mail;
- (4) Via facsimile; or
- (5) Via any other legal means.

(b) Addressee. Notice sent by one of the methods described herein shall be deemed to have been duly given:

(1) If to an Owner, at the address, electronic mail address or facsimile number which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Owner's Lot;

(2) If to an Occupant, to the electronic mail address or facsimile number which the Occupant has designated in writing, or if no such address has been designated, at the address of the Lot occupied; or

(3) If to the Association, the Board or the managing agent, if any, at the postal address, facsimile, or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.

6.3. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

6.4. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

6.5. Fiscal Year. The fiscal year of the Association may be set by Board resolution or, in the absence thereof, shall be the calendar year.

6.6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the members may, by a majority of the Association members present at such meeting, in person or proxy, require that the Association accounts be audited as a common expense by an independent accountant.

6.7. Conflicts. The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association. If there are conflicts or inconsistencies between such, then the provisions of the Georgia Nonprofit Corporation Code (as may be applicable), the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

6.8. Books and Records. To the extent provided for, and restricted in, Section 14-3-1602 of the Georgia Nonprofit Corporation Code, as such Code Section may be amended from time to time, all Association members and any institutional holder of a first Mortgage shall be entitled to inspect Association records at a reasonable time and location specified by the Association, upon written request at least five (5) business days before the date on which the member wishes to inspect and copy. The Association may

Rec: \$25.00

Patty Baker, Clerk of Superior Court - Cherokee County, GA

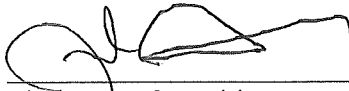
ParticipantIDs: 2028400475 SubmitterID: 0848497841

impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the member. Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other members. Minutes for any Board or Association meetings do not become effective as an official Association record until approved by the Board or Association membership, as applicable, at a subsequent meeting. All Board members may inspect and copy any book or record of the Association.

6.9. Preparer. These Bylaws were prepared by David C. Boy, IV, Lueder, Larkin & Hunter, LLC, 5900 Windward Parkway, Suite 390, Alpharetta, Georgia 30005.

This 20<sup>th</sup> day of January, 2022.

OWENBY HOMEOWNERS ASSOCIATION, INC.

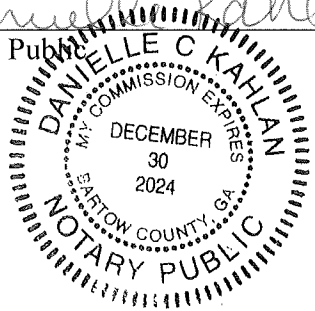


Signature of President  
Print Name: Jeb Gibbs

Sworn to and subscribed before me this 20<sup>th</sup> day of January 2022.

Witness: Matt Beaman  
Danielle C Kahlan

Notary Public



Signature of Secretary  
Print Name: Brian Alcott

Sworn to and subscribed before me this 20<sup>th</sup> day of January 2022.

Witness: Matt Beaman  
Danielle C Kahlan

Notary Public

