

Highlands at Clear Creek

Homeowner's Association

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RESTATED AND AMENDED
DECLARATION OF PROTECTIVE COVENANTS
FOR
THE HIGHLANDS AT CLEAR CREEK

Document Number: HOA-005

Written By: Frank R. Hunt

Effective Date: 2 August 2023

Approved By: _____ (signature on file)

Version: 002

Revision Date: 2 August 2023

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PICKENS COUNTY CROSS REFERENCE

Deed Book 378 Pg 297

Deed Book 1014 Pg 680

GILMER COUNTY CROSS REFERENCE

Deed Book 730 Pg 426

Deed Book 1829 Pg 24

WHEREAS, The Highlands at Clear Creek, LLC (“Original Declarant”) recorded that certain Declaration of Protective Covenants for The Highlands at Clear Creek in Deed Book 378, Page 297 et.seq. of the Pickens County, Georgia land records and Deed Book 730, Page 426 et. seq. of Gilmer County, Georgia land records, as amended (“Declaration”); and

WHEREAS, Article XIII, Section 4 of that Declaration provides that the Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the total eligible Association vote; and

WHEREAS, Members holding two-thirds (2/3’s) of the total eligible Association vote have approved this amended and restated Declaration; and

WHEREAS, the Original Declarant recorded the Supplementary Declaration Annexing Additional Property to that certain Declaration of Protective Covenants for The Highlands at Clear Creek in Deed Book 802, Page 127 of the Gilmer County, Georgia land records, such properties known as The Highlands - Phase II; and

WHEREAS, the Original Declarant recorded the Supplementary Declaration Annexing Additional Property to that certain Declaration of Protective Covenants for The Highlands at Clear Creek in Deed Book 451, Page 95 of the Pickens County, Georgia land records, such properties known as The Highlands - Phase III; and

WHEREAS, the Original Declarant transferred Declarant rights to Bearfoot Investments, LLC (“Declarant”); and

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WHEREAS, a separate Declaration of Protective Covenants for Highlands at Clear Creek, Phase IV(A) was filed by Declarant at Deed Book 1008, page 477, Gilmer County, Georgia Records; and

WHEREAS, a separate Declaration of Protective Covenants for Highlands at Clear Creek, Phase IV (B) was filed by Declarant at Deed Book 1014, page 373, Gilmer County, Georgia Records; and

WHEREAS, the Declarant voluntarily transferred the Warranty Deed to and control of all common elements and all interests held by the Declarant on all properties subject to or which may be unilaterally submitted to the Declaration to The Highlands at Clear Creek Homeowner's Association, Inc. ("Association"); and

WHEREAS, the Owners gave the required consents for the consolidation of all parts of Phases I, II, III and IV (A) and IV (B) under the Original Declaration, as amended, and a Supplemental Declaration and Amendment to the Declaration of Protective Covenants for The Highlands at Clear Creek was executed by the officers of the Association and filed with Pickens County, GA and Gilmer County, GA; and

WHEREAS, the By-Laws of The Highlands at Clear Creek Homeowner's Association, Inc. were recorded as Exhibit "D" to the Declaration; and

WHEREAS, Article VI, Section 8 of the By-Laws provide that the By-Laws may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Members holding at least two-thirds (2/3's) of the total eligible Association vote; and

WHEREAS, Members holding two-thirds (2/3) of the total eligible Association vote have approved the amended and restated By-Laws.

NOW, THEREFORE, the original Declaration and all amendments and exhibits thereto, the separate Declarations and all amendments and exhibits thereto, and the original By-Laws and all amendments and exhibits thereto are hereby deleted in their entireties and the following new Restated and Amended Declaration of Protective Covenants for The Highlands at Clear Creek and By-Laws for The Highlands at Clear Creek Homeowner's Association, Inc. are simultaneously substituted therefor.

Article I **Definitions**

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

Article II **Property Subject To This Declaration**

Section 1. Property Hereby Subjected To This Declaration. The real property registered in Pickens and Gilmer Counties, Georgia as The Highlands at Clear Creek or, more commonly known as The Georgian Highlands, which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration, is the real property described in Exhibit "B", Property Submitted, attached hereto and made a part of this Declaration.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is made subject to this Declaration. However, the Association has the right, but not the obligation, to subject other real property to this Declaration.

Section 3. Property Hereby Excluded From This Declaration. The real property which is, by the recording of this Declaration, excluded from being subject to the covenants and restrictions set forth in this Declaration, is the real property described in Exhibit "B", Property Excluded, attached hereto and made a part of this Declaration.

Article III **Association Membership and Voting Rights**

Section 1. Membership. Every Person who is the recorded owner of a fee interest in any Lot that is subject to this Declaration shall automatically be a Member in the Association. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall go along with and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote be cast nor more than one (1) office held for each Lot owned.

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

Article IV **Assessments**

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

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed to the Lot, whether or not stated in the deed, agrees to pay to the Association: (a) common assessments or charges; (b) special assessments; and (c) specific assessments. All assessments, together with late charges, interest (not to exceed the maximum legal rate), costs, and reasonable attorney's fees actually incurred, shall be (a) a charge on the land and a continuing lien upon the Lot against which each assessment is made from the time the sums become due and payable; and (b) the personal obligation of every Person who is an Owner of the Lot at the time the assessment becomes due. The grantee of each Owner shall be jointly and severally liable for the portion of an assessment as is due and payable at the time of transfer of the Lot. However, the liability of a grantee for the unpaid assessments of an Owner shall not apply to any first Mortgage holder taking title through foreclosure proceedings or by deed in lieu of foreclosure, provided, however, any first mortgage holder who takes title through foreclosure proceedings or by deed in lieu of foreclosure shall be liable for all assessments due after the date of foreclosure.

Per the terms of Article XIII, Section 17 of this Declaration, the Association shall, within five (5) days after receiving a written request and for a reasonable charge, furnish an affidavit signed by an officer or agent of the Association setting forth whether the fees and assessments on a specified Lot have been paid. A properly executed affidavit issued by the Association certifying the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Unless otherwise specified herein, assessments shall be levied equally on

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all Lots within the Community and shall be paid in such manner and on such dates as are fixed by the Board of Directors. Upon ten (10) days' written notice, the Board may accelerate the annual assessment for delinquent Owners.

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

The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted common expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall present at the annual meeting, deliver electronically or in written form by mail using the US Postal Service, a copy of the common expense budget and notice of the amount of the assessment for each Lot to the Owners thereof at least twenty-one (21) days prior to the beginning of the fiscal year. The budget and assessment shall become effective unless disapproved by a Majority of the total Association vote.

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

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special assessments must be approved by the affirmative vote, written consent or any

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combination thereof, of Owners holding a Majority of the votes. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien for Assessments. All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of the Association from the time the sums become due and payable. The Association shall have the right, but not the obligation to evidence the existence of the lien by filing a notice of lien in the Pickens or Gilmer County, Georgia, records. The lien shall be superior to all other liens and encumbrances on the Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage.

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

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments of assessment which are not paid when due shall be delinquent. Any assessment or installment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine, which shall not exceed fifteen (15%) percent of the assessment payment. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. If the assessment is not paid when due, a lien shall attach and, in addition, the lien shall include the late charge, interest at a rate not to exceed the highest rate allowed under Georgia law, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The existence of the lien may, but is not required to be, evidenced by the filing of a notice of lien in the Pickens or Gilmer County, Georgia, records. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire,

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hold, lease, mortgage, or convey the Lot.

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

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

Section 7. Date of Commencement of Assessments.

(a) Assessments against Lots. Assessments shall commence as to a Lot on the first day of the month following the conveyance of the Lot.

(b) All Assessments. Assessments shall be due and payable in a manner and on the schedule that the Board of Directors provides.

Section 8. Specific Assessments. The Board shall have the power to specifically assess specific Lots pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XIII, Section 1, costs and expenses of self-help pursuant to Article XIII, Section 2 and the costs of maintenance performed by the Association which the Owner is responsible for under Article VII, Sections 1 and 2 shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association:

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

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

Article V **Architectural Standards**

Section 1. Architectural Control Committee. No exterior construction, addition, erection, or alteration shall be made upon any part of the Community unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Control Committee ("ACC"). The Board of Directors shall designate one of its Directors to serve as the Chair of the ACC and may divide the ACC into three (3) subcommittees, with one subcommittee having jurisdiction over modifications, another having jurisdiction over new construction, and the third, a Reviewing Body, having jurisdiction over compliance with Design Standards such as appearance, visibility and other aesthetic considerations. In the event of a conflict between the two (2) subcommittees with jurisdiction over construction, the decision of the new construction subcommittee shall control. The Board of Directors shall appoint the members of the ACC subcommittees.

The Board may employ for the ACC architects, engineers, or other Persons necessary to enable the ACC to perform its review. The ACC may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, who shall have full authority to act on behalf of the Committee for all matters delegated. The ACC may, in its discretion and with Board approval, from time to time establish, abolish or amend standards to govern the development of Lots and the design and construction of improvements to a Lot. The text of such standards and amendments shall be available to each Owner. Such standards shall be binding upon all Owners. A review fee in a reasonable amount may be charged.

Section 2. Guidelines, Standards and Procedures. The ACC may modify, with Board approval, the design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all construction activities within the Community. The Design Guidelines and the Architectural Control Standards and Guidelines will contain general provisions applicable to all of the Community. The companion document, Project Rules and Regulations, will outline the expected conduct of contractors and service providers engaged in projects within the Community.

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The ACC shall, with Board approval, have sole and full authority to amend them from time to time, without the consent of the Owners.

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

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

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

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

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

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Section 4. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Board of Directors nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board of Directors, the ACC, nor members of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

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

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

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

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

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

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

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

(c) The size of the Lots shall be a minimum of ten (10) acres in all Pickens County Lots and a minimum of three (3) acres in all Gilmer County Lots and the minimum setback requirements for improvements on the Lots in the Community shall be determined solely by the Design Guidelines set forth by the ACC, if any. All dwellings on all Lots shall contain a minimum of 2,000 square feet of heated and/or cooled space, excluding garages, fully finished for occupancy.

(d) Concrete, concrete block, or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling except for slab foundations or accessory structures in the Community. Stucco masonry walls, brick, rock and wood are permitted exterior surfaces; provided, however, there shall be no dwellings or structures with exteriors that are completely stuccoed. The exterior finishes for all structures shall be of a material and colors that are organic and compatible with the natural surroundings within the Community. Colors should be subdued, unobtrusive and natural or earth-toned in nature.

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

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materials or devices are to be used.

(f) Assuming there are no external considerations such as documented work stoppages or supply constraints, construction of all dwellings or other structures erected shall be completed and as to dwellings, a certificate of occupancy shall be issued by the appropriate governmental entity on or before one (1) year from the date of commencement of construction. Construction shall be deemed to be commenced upon the pouring of foundation footings.

(g) Manufactured Residences and other such buildings constructed on the Lot are prohibited. All construction in the Community will conform to the Design Standards and be subject to the review and approval of the ACC.

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

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

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

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

(l) Above ground swimming pools shall not be erected, constructed, or installed on any Lot.

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

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

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

(p) No activity which may create erosion or siltation problems shall

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

Section 8. Variances.

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

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

Article VI

Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants in the Community. These use restrictions may only be amended in the manner provided in

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Article XIII, Section 4, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners for comment prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants in the Community until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total eligible Association.

Section 2. Use of Property – Residential Use Only. Each Lot and each Residence shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or Residence or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in the Residence on a Lot may conduct such ancillary business activities within the Residence so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Residence; (b) the business activity does not involve persons coming onto the Community who do not reside in the Community or door-to-door solicitation of residents of the Community (except that deliveries may be made by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (c) the business activity conforms to all zoning requirements for the Community; (d) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (e) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board of Directors; and (f) the business activity does not result in a materially greater use of the Common Property facilities or Association services.

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

Section 3. Leasing.

(a) General. Lots may be leased for residential purposes only. All leases shall have a minimum term of one (1) year and a copy of all leases shall be

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given to the Board of Directors by the Owner of the Lot within thirty (30) days of entering into the lease. All leases shall require, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association and shall also obligate the tenant to comply with these documents.

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

Section 4. Vehicles. The term "vehicles", as used in this provision, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, golf carts and automobiles. All vehicles shall be parked within garages, on driveways or on other paved parking areas in the Community. Parking between the street-facing side of the house and the road is prohibited. The term "recreational vehicles", as used herein, shall include, without limitation, motor homes, mobile homes, boats, jet skis or other watercraft, trailers, other towed vehicles, go-carts, golf carts, ATV's and campers. Recreational vehicles may be parked on a Lot, other than in a garage, so long as the location is not visible from any road or adjoining Lot.

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

No motorized vehicles shall be permitted on pathways, or unpaved portions of a Lot not owned by the operator of that vehicle except for public safety vehicles and vehicles authorized by the Board.

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

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

Section 7. Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Community without the approval of the ACC and the Board of Directors. The following shall apply to all Owners:

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

(b) The list of permitted antennas includes flagpole antennas that do not exceed 30 feet, vertical antennas that do not rise more than 30 feet above the peak of the residence, and wire antennas no higher than 30 feet above the roof peak. No traps-in-wire antennas are allowed on the road side of the residence and towers of any type should not rise more than 30 feet above the peak of the residence. The maximum length of beam antennas should not exceed 36 feet. Tower antennas should be located on the Property such that they are not visible from the road or an adjacent Lot. Radio amateurs will need to apply to the HOA's Architectural Control Committee to obtain approval and may only erect one outdoor tower antenna, one flagpole antenna and four wire antennas.

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(c) No direct broadcast satellite (DBS) antenna or disk or multi-channel multi-point distribution service (MMDS) antenna or disk larger than one meter in diameter shall be placed, allowed or maintained upon the Community. DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed on a Owner's Lot in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

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

Section 8. Solar Panels and Wind Turbines for Energy Generation or Conservation. Pole or ground-based arrays of solar panels are prohibited. Solar panels that are an integral and harmonious part of the architectural design of a structure and are not visible from any road or an adjoining Lot are acceptable but must be approved by the ACC. Wind turbines may be installed on a Lot so long as its location is not visible from any road or adjoining Lot and its operation is not deemed harmful to local flora and fauna.

Section 9. Firearms and Fireworks. The use, display or discharge of firearms or fireworks on any portion of the Community is prohibited; provided, however, that the display of lawful firearms in the Community is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. § 25-10-1, as amended.

Section 10. Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from a Lot and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

Section 11. Clotheslines, Garbage Cans, Woodpiles, Recreational Equipment, Etc. All basketball hoops, basketball goals, swimming pool or playground equipment, clotheslines, garbage cans, woodpiles, and related equipment and other similar items shall be located or screened so as to be concealed from view from any

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road and from adjacent Lots. Any playground or other play areas or equipment located on the Common Property shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 12. Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.

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

Section 14. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on and in his or her Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier, speaker or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. However, any siren or device for security purposes shall contain a device which causes it to automatically shut off within fifteen (15) minutes.

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

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

Section 17. Tree Removal and Improvements or Alterations to the Conservation Area. No trees having a diameter of six (6) inches or more at a height of three feet above the ground shall be removed without the prior written approval of the Architectural Control Committee. The following exceptions apply: (a) trees less than eight (8) feet in height; (b) diseased or dead trees; (c) trees needing to be removed to promote the growth of other trees or for safety reasons; or (d) without ACC review and approval, trees within twenty-five (25) feet of the residence or ten (10) feet of the driveway, walkways or septic tank leach fields constructed or to be constructed on the Lot.

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

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

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or sight problem.

Section 20. Landscape Lighting. Landscape lighting may be added to a Property to accentuate a residence or mark the course of a driveway or path approaching or in the proximity of a residence. However, such lighting should be either i) of the commercially-available, low-voltage type or ii) of construction and positioning such that the display and output in lumens and directionality is limited to lighting the immediate area below and around the fixture such that it does not shine outside the property in a manner that will be disturbing to neighbors. Reasonable seasonal decorative lights may be displayed between Thanksgiving and January 15th.

Section 21. Subdivision of Lots. No Lot shall be subdivided, or adjacent Lots combined, or boundary lines changed for purposes of altering assessments on a Lot or Lots under Article IV of this Declaration. Notwithstanding the above, the Association expressly reserves the right to replat any boundaries of Lots owned by the Association. Any such division, boundary line change, or re-platting by the Board shall not be in violation of the applicable subdivision and/or zoning regulations.

Section 22. Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant on any portion of the Community at any time, either temporarily or permanently, without the written approval of the Board.

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

Article VII

Maintenance; Conveyance of Common Property to Association

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements located on the Common Property. The Association, as part of its maintenance obligation regarding the Area of Common Responsibility shall maintain and repair all roads, streets and other paved areas in the entire Community.

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In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether located within or outside the Community, where the Board has determined that such maintenance would benefit all Owners.

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

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

Section 2. Owner's Responsibility. Except as provided in Section 1 above and unless such maintenance responsibility is otherwise assumed or assigned to the Association, all maintenance of the Lots and all structures, parking areas, landscaping, and other improvements on a Lot shall be the sole responsibility of the Owner, who shall maintain such areas in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors determines that such areas are not maintained in a manner consistent with the Community-Wide Standard and this Declaration, except in an emergency situation, the Board of Directors shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall state the maintenance, repairs, or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of the notice to complete the maintenance, repair, or replacement. In the event that the maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, the Owner shall begin the work and shall complete it within a reasonable time. If the Board determines that (i) an emergency exists, or (ii) that an Owner has not complied, the Association may provide the maintenance, repair, or replacement at Owner's sole cost and expense, and all costs including reasonable attorney's fees, shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

Article VIII **Insurance and Casualty Losses**

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

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

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

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

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

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

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

(d) All casualty insurance policies shall have an inflation guard

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

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

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

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

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

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

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

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

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available or, if necessary, in order to satisfy the requirements of applicable laws. If obtained, the amount of fidelity coverage shall be determined in the Board of Directors' best business judgment, and, if available, shall at least equal three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses

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based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2. Individual Insurance. Each Owner of a Lot shall be obligated to obtain and maintain at all times blanket all-risk casualty insurance on such Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. If reasonably available, the casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners of Lots shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times and Owners shall provide a certificate of such required insurance to the Board of Directors, upon request. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner and the Mortgagee of such Owner.

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

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

(b) Repair and Reconstruction. The Board of Directors must proceed to repair or reconstruct any damage or destruction to the Common Property on behalf of the Association unless within sixty (60) days after the casualty, it obtains the agreement of at least seventy-five (75%) percent of the total Association vote to not repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall

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be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is not sufficient to cover the cost of repair or reconstruction, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots and/or Units owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be retained by and for the benefit of the Association in an Association account.

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

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

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

Article IX **Condemnation**

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after the taking, Owners holding at least seventy-five (75%) percent of the total Association vote other than Declarant and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X) otherwise agree, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are

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available. The provisions of Article VII, Section 3, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article X

Annexation of Additional Property

Section 1. Annexation. Subject to the consent of the owner and upon the affirmative vote, or written consent, or any combination thereof, of Owners holding two-thirds (2/3) of the total Association vote, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Pickens or Gilmer County, Georgia, records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided in the Supplementary Declaration.

Section 2. Withdrawal of Property. Subject to the consent of the Owner or Owners and upon the affirmative vote, or written consent, or any combination thereof of Owners holding a Majority of the total Association vote, the Association reserves the right to file a supplementary Declaration at any time for the purpose of removing a certain Lot or Lots or portions of the Community from the provisions of this Declaration to the extent that said Lot was or Lots were originally included in error or as a result of any changes whatsoever in the Association's plans for the Community.

Article XI

Mortgage Provisions

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

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

Article XII **Easements**

Section 1. Easements for Use and Enjoyment.

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

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

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

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

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

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(b) Any Owner may delegate his or her right of use and enjoyment in and to the Common Property to the members of his or her family residing in the Lot, tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of the Owner's Lot, if leased.

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

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

Section 4. Easement for Maintenance. The Association expressly reserves a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article VII, including, without limitation, an easement over Lots

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adjacent to the ridge in the central portion of the Community for maintenance of the Conservation Area shown on the recorded plat for the Community trails. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect the property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 5. Easement over Streets. Every Owner and Occupant and his or her tenants, guests, invitees, agents and contractors shall have an easement over, on and to the roads, streets and paved areas in the Community for access to and ingress and egress to and from his or her Lot. Notwithstanding the above, no Owner shall grant and no Lot shall be used to develop a right-of-way or to create an access road or easement for ingress and egress to any development or property or public road that lies outside of the Community, except to the extent that such access for ingress and egress is required by law, without approval of the Board of Directors of the Association and upon the affirmative vote, or written consent, or any combination thereof of Owners holding a Majority of the total Association vote.

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

Article XIII **General Provisions**

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

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vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership. Every Owner and Occupant shall comply with the Declaration, By-Laws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Lot, to take action to enforce the terms of the Declaration, By-Laws or rules and regulations.

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

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

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

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violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

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

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

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

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions

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shall be automatically extended for successive periods of twenty (20) years, unless at least fifty-one (51%) percent of the record Owners execute an agreement to prevent renewal of the covenants and such agreement is recorded and an attorney's affidavit confirming ownership of the Lots or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting termination must be recorded within the year immediately preceding the beginning of any renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as above.

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

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the total eligible Association vote. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment.

Section 5. 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 IN THE COMMUNITY. HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES ACKNOWLEDGES AND AGREES THAT**

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THE ASSOCIATION IS NOT A PROVIDER OF SECURITY NOR DOES THE ASSOCIATION HAVE A DUTY TO PROVIDE SECURITY FOR THE COMMUNITY. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-OWNERS AND NON- OCCUPANTS WILL NOT GAIN ACCESS TO THE COMMUNITY AND COMMIT CRIMINAL ACTS NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

Section 6. Dispute Resolution. Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director or officer or any agent of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

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

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

Section 9. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other

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provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 10. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 11. Preparer. This Declaration was prepared by a representative of the Highlands at Clear Creek Homeowner's Association, Inc. and reviewed for accuracy, completeness and conformity to legal standards by John C. Edwards, Edwards Law Group LLC, 401 East Main Street, Canton, Georgia 30114.

Section 12. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

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

Section 14. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association that will likely exceed amounts approved for legal fees in the annual budget unless approved by the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding a Majority of the total Association vote. This Section shall not apply, however, to i) actions brought by the Association to enforce the

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provisions of the governing documents (including, without limitation, the foreclosure of liens): ii) the imposition and collection of assessments as provided in Article IV; iii) counter claims brought by the Association in proceedings instituted against it, or iv) actions brought by the Association against any contractor, vendor, or supplier of services or goods arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the same percentage of votes, pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 15. Books and Records.

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

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

(ii) its By-Laws or restated By-Laws and all amendments to them currently in effect;

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

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

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

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

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

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

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of State.

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

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

(ii) accounting records of the Association; and

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

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

Section 16. Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy, the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

Section 17. Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot, the Owner or his or her agent shall give to the Association, in writing and at least seven (7) days prior to the completion of the transaction, the name,

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address, contact information and such other information as the Board may reasonably require, of the purchaser or lessee of the Lot. The Association will provide an affidavit regarding fees assessed and owed or paid by the current Owner and other such information as may be required by the new Owner or closing attorney as part of the closing package once, but not before, the above information is received by the Association.

Section 18. Use of the "The Highlands", "The Highlands at Clear Creek" and "The Georgian Highlands" Names. No Person shall use the words "The Highlands" or "The Highlands at Clear Creek" or "The Georgian Highlands" or any derivative thereof in any printed or promotional material including property sales descriptions without the prior written consent of the Board of Directors of the Association. However, Owners may use the words "The Highlands" or "The Highlands at Clear Creek" or "The Georgian Highlands" where such terms are used solely to specify that a particular Lot or Lots are located in the Community.

Section 19. Agreements. All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

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

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

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IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of the Association herein, have executed this instrument and affixed the corporate seal this 2nd day of August, 2023.

THE HIGHLANDS AT CLEAR CREEK HOMEOWNER'S ASSOCIATION, INC.

By:

(signature on file)

D. Ren McDearis

(President)

By:

(signature on file)

Elizabeth A. Hunt

(Secretary)

signed, sealed and delivered
this ____ day of _____, _____

Notary Public

My Commission Expires: _____

RESTATED AND AMENDED

DECLARATION OF PROTECTIVE COVENANTS

FOR

THE HIGHLANDS AT CLEAR CREEK

THIS DECLARATION is made on the date set forth below by The Highlands at Clear Creek Homeowner's Association, Inc., a non-profit Georgia Corporation ("Association");

WITNESSETH:

WHEREAS, the Association and its Members are the owner of the Common Property and the real property described in Article II, Section 1 of this Declaration; and

WHEREAS, the Association and its Members desire to subject the Common Property and the real property described in Article II, Section 1 to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

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

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

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

Return to:
President
Highlands at Clear Creek
Homeowner's Association, Inc.
P.O. Box 1201
Jasper, GA 30143

Highlands at Clear Creek

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EXHIBIT "A"

Definitions

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

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

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

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

(d) "By-Laws" shall refer to the By-Laws of the Highlands at Clear Creek Homeowner's Association, Inc., attached to this Declaration as Exhibit "C" and made a part of this Declaration

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

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(f) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto and registered specifically in Pickens and Gilmer Counties, Georgia as The Highlands, also referred to as The Highlands at Clear Creek, or more commonly named The Georgian Highlands; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.

(g) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association.

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

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

(j) "Manufactured Residence" or "Manufactured Home" shall mean any structure that is constructed almost entirely in an off-site factory and transported to the Lot for assembly.

(k) "Member" shall mean every Person who is the recorded owner of a fee interest in any Lot that is subject to this Declaration shall automatically be a Member in the Association.

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

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

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

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

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

(q) "Property" shall mean the real property described in Exhibit "B" attached hereto and made a part of this Declaration.

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

(s) "Reviewing Body" shall mean a sub-committee of the ACC made up of three to five Members, only one of which may be a Board Director. The committee is tasked with working with the ACC Chair and reviewing conformance with the Design Guidelines and ACC Standards as regards issues such as foliage preservation, aesthetics, visibility of outbuildings, parking of recreational vehicles, and similar issues.

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

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EXHIBIT "B"

Property Submitted

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

ALL THAT TRACT or parcel of land lying and being in Land Lots 44, 65 and 66 of the 5th District, 2nd Section of Gilmer County, Georgia containing 361.50 acres, more or less, and being Lots 48 through 144 of The Highlands – Phase Two (North Park) (a minimum of 3.0 acre subdivision located in Gilmer County, Georgia containing a total of 98 Lots), as more particularly shown and delineated on that certain Final Plat prepared by Chastain & Reece, P.C., dated January 5, 2001, recorded at Plat Book 36, Page 55, Gilmer County, Georgia records, which Plat is incorporated herein by this reference and made part hereof.

ALL THAT TRACT or parcel of land lying and being in Land Lots 78, 79 and 80 of the 5th District, 2nd Section of Pickens County, Georgia containing 213.57 acres, more or less, and being Lots 145 through 164 of The Highlands – Phase Three (a minimum 10.00 acre subdivision located in Pickens County, Georgia containing a total of 20 Lots). As more particularly shown and delineated on the certain Final Plat prepared by Chastain & Reece, P.C., dated July 30, 2001, recorded at Plat Book LL, Page 113, Pickens County, Georgia records, which Plat is incorporated herein by this reference and made a part hereof.

ALL THAT TRACT or parcel of land lying and being in Land Lots 76, 77, 104 and 105 of the 5th District, 2nd Section of Gilmer County being Lots 170 to 215, The Highlands as shown on plats of survey prepared by Chastain & Reece, P.C., dated 30th October, 2003 bearing the seal of Mark E. Chastain, Georgia registered land surveyor no. 2718 recorded in Plat Book 41 Pages 232-A to Pages 232-I of the Gilmer County, Georgia records.

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ALL THAT TRACT or parcel of land lying and being in Land Lots 104, 105 and 112 of the 5th District, 2nd Section of Gilmer County being Lots 165 – 169 and Lots 216 – 219, and Lot 220 in Pickens County, The Highlands as shown on plats of survey prepared by Chastain & Reece, P.C., dated 10th December, 2003 bearing the seal of Mark E. Chastain, Georgia registered land surveyor no 2718 recorded in Plat Book 41 Pages 268A to Pages 268D of Gilmer County.

Property Excluded

Less and Excluding

ALL THAT TRACT or parcel of land lying and being in Land Lot 44 of the 5th District, 2nd Section of Gilmer County, Georgia, containing 4.60 acres, more or less, and being Lot 47 of The Highlands – Phase Two (North Park), as more particularly shown and delineated on that certain Final Plat prepared by Chastain & Reece, P.C., dated January 5, 2001, recorded at Plat Book 36, Page 55, Gilmer County, Georgia records, which Plat is incorporated herein by this reference and made a part hereof.

EXHIBIT "C"

**BY-LAWS
For
THE HIGHLANDS AT CLEAR CREEK HOMEOWNER'S ASSOCIATION**

Document Number:	<u>HOA-001</u>	Version:	<u>003</u>
Written By:	<u>Frank R. Hunt</u>	Revision Date:	<u>19 November 2019</u>
Effective Date:	<u>10 September 2020</u>	Date:	_____ (on file)
Approved By:	_____ (signature on file)		

**Article I
General**

Section 1. Applicability. These By-Laws provide for the self-government of The Highlands at Clear Creek, in accordance with the Articles of Incorporation filed with the Secretary of State and the Restated and Amended Declaration of Protective Covenants for The Highlands at Clear Creek, recorded in the Pickens and Gilmer County, Georgia land records ("Declaration").

Section 2. Name. The name of the corporation is The Highlands at Clear Creek Homeowner's Association, Inc., ("Association").

Section 3. Definitions. The terms used herein shall have their generally accepted meanings or such meanings as are specified in Paragraph 2 of the Declaration.

Section 4. Membership. An Owner of a Lot shall automatically become a member of the Association upon taking title to the Lot and shall remain a member for the entire period of ownership. As may be more fully provided below, a spouse or a cohabitant of a member may exercise the powers and privileges of the member. If title to a Lot is held by more than one (1) Person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) vote per Lot. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest

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shall not terminate the Owner's membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

Section 5. Entity Members. In the event an Owner is a corporation, limited liability company, 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, manager of a limited liability company or representative of such other legal entity shall be eligible to represent such entity or entities 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 or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these By-Laws.

Section 6. Voting. Each Lot shall be entitled to one equal vote, which vote may be cast by the Owner, the Owner's spouse, the cohabitant of the Owner, or by a lawful proxy as provided below. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. If only one (1) co-owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in person or by proxy, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these By-Laws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a Majority or a quorum.

Section 7. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" mean more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these By-Laws, all decisions shall be by majority vote.

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Section 8. Purpose. The Association shall have the responsibility of administering the Association, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Association and performing all of the other acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

Article II **Meetings of Members**

Section 1. Annual Meetings. The regular Annual Meeting of the members shall be held during the fourth quarter of each year with the date, hour, and place to be set by the Board of Directors. No Annual Meeting of the Association shall be set on a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called for any purpose at any time by the President or Secretary, by request of any two (2) members of the Board of Directors, or upon written petition of Owners holding at least fifteen (15%) percent of the total eligible Association vote. Any such written petition by the members must be submitted to the Association's Secretary by hand delivery, certified mail or by electronic transmission. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition, setting the date time and location of the meeting (which is not required to be the date, time or location requested in the petition submitted to the Association), and the Secretary shall send notice of the meeting in accordance with these By-Laws. Any special meeting called pursuant to written petition shall be set within thirty (30) days of the date of the petition. Furthermore, a demand by a member for a special meeting may be revoked by a written or electronic transmission to that effect by the member prior to the call of the special meeting.

Section 3. Notice of Meetings. It shall be the duty of the Secretary of the Association to deliver via first class mail or in person or by electronic transmission to

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each Owner of Lots of record or to the Lots a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each Annual Meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an Annual Meeting shall state the time and place of the meeting. If any Owner wishes notice to be given at an address other than his or her Lot, the Owner shall have designated by notice in writing by electronic transmission to the Secretary such other address. Notice of a meeting shall be delivered personally, or sent by United States Mail, postage prepaid, or issued electronically in accordance with applicable provisions of Georgia law to all Owners of record at such address or addresses as any of them may have designated. Notices given by electronic transmission shall be given at least forty-eight (48) hours before the time set for a meeting. The mailing or delivering of a notice of meeting in a manner provided in this Section shall be considered proper service of notice.

Section 4. Waiver of Notice. Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing or by electronic transmission, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner 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.

Section 5. Quorum. Except as may be provided elsewhere, the presence of Owners, in person or by proxy, entitled to cast one-third (1/3) of the eligible votes of the Association shall constitute a quorum. Owners whose voting rights have been suspended pursuant to the Declaration or these By-Laws shall not be counted as eligible votes toward the quorum requirement. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Under circumstances where a quorum is not established at a meeting, the conduct of official Association business will require an external effort conducted either by US Mail, personal delivery or electronic communication, to secure an additional number of eligible votes to achieve a quorum and, thereafter, move forward on the official Association business.

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Section 6. Adjournment. Any meeting of the Owners may be adjourned from time to time for periods not exceeding ten (10) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

Section 7. Proxy. Any 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. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or by electronic transmission to any Board member. Any proxy by electronic transmission must contain or be accompanied by information from which it can be determined that the member, the member's agent, or the member's attorney-in-fact authorized the electronic transmission.

Proxies may be revoked only by written notice delivered by personal delivery, U.S. mail or electronic transmission to the Association except that: (a) the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting; and (b) a later dated proxy shall be automatically be deemed to invalidate any previously given proxy. Further, any proxy shall be void if it is not dated or if it purports to be revocable without notice as aforesaid. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. The transfer of title to any Lot shall void any outstanding proxy pertaining to the voting rights appurtenant to that Lot. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Any copy, facsimile transmission, or other reliable reproduction of the writing or electronic transmission of a proxy may be substituted or used in lieu of the original writing or electronic transmission for any and all purposes for which the original writing or electronic transmission could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing or electronic transmission.

Section 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,

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written ballot, or electronic consent form or ballot to every member entitled to vote on the matter. A response period of no less than thirty (30) days following the postmarked date will accompany any consent form or ballot requiring a vote by the members. An electronic transmission which is transmitted by a member that evidences a member's consent or approval on a ballot, requests or demands an action taken by the Association, or provides notice to the Association shall be deemed to be written, signed, and dated provided that the electronic transmission sets forth or is delivered with information from which it can be determined (1) that the electronic transmission was transmitted by the member, and (2) the date on which the member transmitted the electronic transmission. The date on which the electronic transmission is transmitted shall be deemed the date on which such consent, request, demand or notice was signed.

(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 or electronic ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and 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 or electronic transmission.

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 date and time by which a ballot must be received by the Board in order to be counted. A written or electronic ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) Written Consent. Approval by written or electronic consent shall be valid only when the number of consents received equals or exceeds the requisite majority of the voting power required to pass the matter under consideration. Executed written and electronic consents shall be included in the minutes or filed with the Association's records. If an action of the members is approved by written or electronic consent hereunder, the Board shall issue notice of such approval to all members. 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 By-Laws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

Section 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,

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these By-Laws or the Articles of Incorporation, unless the Owners present at a particular meeting vote to suspend Robert's Rules at that meeting.

Article III

Board of Directors

A. Composition and Selection.

Section 1. Composition and Eligibility. The affairs of the Association shall be governed by a Board of Directors. The directors shall be Owners or spouses or cohabitants of such Owners; provided, however, no Owner and his or her spouse or cohabitant may serve on the Board at the same time, and no co-owners may serve on the Board at the same time. All directors must reside, either full or part-time, in the Community. No persons shall be eligible to be elected to or continue to serve on the Board of Directors if they are shown on the books and records of the Association to be more than sixty (60) days delinquent in the payment of any assessment or charge by the Association. Directors shall not be eligible to serve more than three (3) consecutive two (2) year terms without first resigning from the Board for a time period which shall be the lesser of: (a) one (1) year; or (b) the period of time from the end of one Annual Meeting of the Association to the beginning of the next Annual Meeting of the Association.

Section 2. Number of Directors and Term of Office. Owners shall elect five (5) persons to serve as directors of the Association. Such election shall coincide with the annual meeting or a special meeting duly called per Article II, Section 2. If such meeting is not the Annual Meeting, the directors elected shall serve until the next Annual Meeting. Directors shall be elected on an alternating basis; that is, three (3) directors shall be elected for terms of two (2) years each during one annual election cycle and two (2) directors shall be elected for terms of two (2) years each during the next annual election cycle. The members of the Board of Directors shall hold office until their respective successors shall have been duly elected by the Association.

Section 3. Removal of Members of the Board of Directors. At any annual or special meeting of the Association duly called, any one or more Board members may be removed with or without cause by a Majority of the members of the Association entitled to elect said director and a successor may then and there be elected to fill the vacancy thus created. Further, any director who is more than sixty (60) days past due in the payment of any assessment or charge shall be automatically removed from the Board of Directors, even if the director subsequently pays the amount owed, and the vacancy shall be filled as provided in Section 5 below. Any director who has had

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three (3) consecutive unexcused absences from regularly scheduled Board meetings 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 the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 4. Vacancies. Vacancies in the Board caused by any reason, except the removal of a director by vote of the membership, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so selected shall hold office for the remainder of the term of the director being replaced. Notwithstanding anything to the contrary herein, any director who is an officer, director or other designated agent of an entity member and whose position becomes vacant for any reason, may be replaced by the entity who is the Owner unless there has been a transfer of ownership of the Lot, in which case, the vacancy shall be filled by the remaining directors, even if less than a quorum at any meeting of the directors.

Section 5. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the members. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

Section 6. 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 that the director's interest is disclosed to the Board, that the Board determines that there is no breach of fiduciary duty, 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 any meeting at which the proposed contract is discussed but shall not be entitled to discuss the proposed contract during the discussion.

Section 7. Nomination. Nomination for election to the Board shall be made by a Nominating and Election Committee which shall be appointed by the Board of Directors at least thirty (30) days prior to the Annual Meeting to serve a term of one (1) year and shall consist of at least one (1) Board member and at least two (2) other members of the Association who are not Board members. The Nominating and Election Committee may nominate any number of qualified individuals, but not less than the number of directors to be elected. The nominations shall be made at least thirty (30) days prior to the Annual Meeting and include a presentation of the

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qualification of each nominee. Nominations shall also be allowed from the floor at the Annual Meeting and each candidate so nominated shall be given a reasonable opportunity to communicate his or her qualifications to the membership at that time. No member shall be nominated for election to the Board, nor permitted to run for election, if more than thirty (30) days past due in the payment of any assessment. Failure to comply with this Section shall in no way invalidate the election of directors who were not nominated in accordance with the provisions hereof.

Section 8. Elections. All members of the Association eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board members shall be by a written ballot presented to the Association members in either printed form or electronically no later than thirty (30) days in advance of the Annual Meeting.

B. Meetings.

Section 1. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every six (6) months. The newly elected Board shall meet within ten (10) days after the conclusion of the annual election cycle and seating of the new Board of Directors.

Section 2. Special Meetings. Special meetings of the Board may be called by the President on two (2) day notice to each director given by personal delivery, regular first-class mail, telephone, or electronic transmission, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written or electronic request of at least two (2) directors.

Section 3. Waiver of Notice. Any director may, at any time, in writing or by electronic transmission, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board 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.

Section 4. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all

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transactions and proceedings occurring at such meetings. A Majority of directors 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. Minutes of the meeting shall be made available to any eligible member or government authority by written request.

Section 5. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so 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, 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.

Section 6. Action Without a Meeting. Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a majority of the directors consent to such action in writing, sent via hand delivery, regular first class mail, or electronic transmission. Such consents must describe the action taken and be signed by no fewer than a majority of the directors and such consents shall be filed with the minutes of the Board of Directors.

Section 7. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, 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. However, the executive session will not be open to the general membership.

Section 8. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call, internet or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors participating by telephone or internet shall be deemed to be present at such meeting for quorum and other purposes. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

C. Powers and Duties.

Section 1. Powers and Duties. The Board of Directors shall manage the

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affairs of the Association and shall have all the powers and duties necessary for the administration of the Homeowners and may do all such acts and things as are not by the Declaration, the Articles of Incorporation, or these By-Laws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors 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, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility as defined in Article VII of the Declaration;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Property, Association property, and the Area of Common Responsibility 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. § 14-3-302, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof, including, without limitation, monetary fines within the best fiduciary interests of the Association;

(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 Elements in accordance with the other provisions of the Declaration and these By-Laws, after damage or destruction by fire or other casualty;

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(i) enforcing by legal means the provisions of the Declaration, these By-Laws, 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 within the best fiduciary interests of 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 common management agreements with trusts, Homeowner's associations, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 2. 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. The Board shall use reasonable efforts in any management contract to provide for termination of such contract by the Association with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year.

Section 3. Borrowing. Except as may be set forth in Paragraph 18 of the Declaration, the Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration, or improvement of the Common Elements and facilities, and for other purposes, with the approval of a Majority of the members of the Association.

Section 4. Liability and Indemnification of Officers, Directors and Committee Members. The Association shall indemnify every officer, director, and committee member against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action,

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suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association, in determining whether to indemnify a director, officer or committee member, shall not impute knowledge to said director, officer or committee member from any source whatsoever, but instead, any such determination shall be based on the actual knowledge of the director, officer or committee member and recommendations of the Association's legal counsel. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors and committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or committee member 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, director or committee member or former officer or director may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

Article IV **Officers**

Section 1. Designation. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all or any of which may be the same person. One or more Vice Presidents may be elected at the discretion of the Board.

Section 2. Election of Officers. The Association officers shall be elected annually by the members of the Board at the first Board meeting following the conclusion of the annual election cycle and shall hold office at the pleasure of the Board until a successor is elected during the next election cycle.

Section 3. Removal of Officers. Upon the affirmative vote of a Majority of the members of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

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Section 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.

Section 5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 6. Vice President(s). Vice President(s), if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 7. Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

Section 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 of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 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.

Section 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 resolution of the Board of Directors.

Article V **Committees**

Section 1. General. The Board of Directors is authorized to establish committees to perform those tasks and to serve for those periods that it designates. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Architectural Control Committee. The Board shall establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Community as provided in the Declaration.

Section 3. Nominating and Election Committee. Article III, Section 7 provides for the establishment of a committee made up of, at minimum, two (2) members and one (1) Board Director who shall organize and manage the annual election of Board Directors.

Section 4. Maintenance Committee. The Board shall establish a Maintenance Committee for the purpose of organizing and managing the various activities and contracts associated with the upkeep of the Community on a routine basis.

Section 5. Other Committees. There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

Section 6. Service on Committees. Unless otherwise provided in these By-Laws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

Article VI **Miscellaneous**

Section 1. Notices. Unless otherwise provided in these By-Laws, all notices,

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demands, bills, statements or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally, or sent by U.S. mail, first class postage prepaid, or by electronic transmission:

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

(b) If to an Occupant, at the address of the Lot occupied; or

(c) If to the Association or the Board of Directors, at the principal office of the Association, if any, or at such other address as shall be designated in writing and filed with the Secretary.

Section 2. Severability. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these By-Laws or the Declaration.

Section 3. 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 By-Laws or the intent of any provision thereof.

Section 4. Gender and Grammar. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. Fiscal Year. The fiscal year of the Association may be set by Board resolution, and, in the absence thereof, shall be the calendar year.

Section 6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board and a financial statement prepared. However, after having received the Board's financial statement review at the annual meeting, the Owners may, by a majority of the Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Lot upon submission of a written request and must be available within one hundred twenty (120) days of the Association's fiscal year end. If an audited financial statement by an independent accountant is not required, a mortgage holder may have an audited statement prepared at its own expense.

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Section 7. Conflicts. The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these By-Laws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Declaration, these By-Laws, or the Articles of Incorporation, then the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these By-Laws, 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.

Section 8. Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or By-Laws, in which case such higher vote shall be necessary to amend, these By-Laws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding two-thirds (2/3) of the total vote of the Association. No amendment shall become effective until it is certified by the President and Secretary of the Association and recorded in the Pickens and Gilmer County Georgia land records. Any amendment duly certified and recorded shall be conclusively presumed to have been duly adopted in accordance with the Declaration and By-Laws. Owners whose voting rights have been suspended pursuant to the Declaration or these By-Laws shall not be counted as eligible votes toward the amendment requirement.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

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