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Return to: Weissman, Nowack, Curry & Wilco, P.C.  
3500 Lenox Road, 4<sup>th</sup> Floor  
Atlanta, Georgia 30326 Attention: JSL

STATE OF GEORGIA  
COUNTY OF COBB

Reference: Deed Book: 8368  
Page: 36

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
HARVEST POINTE**

WEISSMAN, NOWACK, CURRY, & WILCO, P.C.  
Attorneys  
Jay S. Lazega, Esq.

One Alliance Center, 4th Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
(404) 926-4500  
[www.wncwlaw.com](http://www.wncwlaw.com)

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**THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.**

**CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING BOTH ASSESSMENTS/CHARGES DUE ON LOTS AND ANY UNCURED ARCHITECTURAL VIOLATIONS OR UNAUTHORIZED IMPROVEMENTS ON LOTS, PURSUANT TO THE PROVISIONS HEREOF.**

**WHEREAS**, the Declaration of Covenants, Conditions and Restrictions for Harvest Pointe Subdivision was recorded on July 15, 1994, in Deed Book 8368, Page 36, *et seq.*, Cobb County, Georgia Records ("Original Declaration"), as amended; and

**WHEREAS**, Article IX, Section 9.02 of the Original Declaration provides for amendment of the Original Declaration with the affirmative vote, written consent, or combination thereof, of members holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote of the Harvest Pointe Homeowners Association, Inc. ("Association"); and

**WHEREAS**, members holding at least sixty-six and two-thirds (66-2/3%) percent of the total eligible Association vote desire to amend and restate the Original Declaration and have approved this amendment; and

**WHEREAS**, Article VIII, Section 4 of the By-Laws of Harvest Pointe Homeowners Association, Inc. ("Original By-Laws") provides for amendment of the Original By-Laws by the affirmative vote of a majority of the members represented at a duly called meeting of the Association, and a majority of the members represented at a duly called Association meeting or by lawful consent have approved this amendment to the Original By-Laws; and

**WHEREAS**, these amendments are not material with respect to any Eligible Mortgage Holder in that they do not adversely affect any right, title, interest or privilege held by any mortgage holder on any Lot; provided, however, if a court of competent jurisdiction determines that these amendments do so without such mortgage holder's consent, then these amendments shall not be binding on the mortgage holder so involved, unless it consents hereto; and if such consent is not forthcoming, then the provisions of the Original Declaration and Original By-Laws prior to these amendments shall control with respect to the affected mortgage holder;

**NOW, THEREFORE**, the Original By-Laws and the Original Declaration, and all exhibits thereto, are hereby stricken in their entirety and the following is simultaneously substituted therefor:

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
HARVEST POINTE**

**1. NAME.**

The name of the property is Harvest Pointe, which is a residential property owners' development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

**2. DEFINITIONS.**

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as follows:

(a) **Act** means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

(b) **Architectural Control Committee or ACC** means the committee established to exercise the architectural review powers set forth in Paragraph 10 hereof.

(c) **Articles of Incorporation or Articles** mean the Articles of Incorporation of Harvest Pointe Homeowners Association, Inc., filed with the Secretary of State of the State of Georgia.

(d) **Association** means Harvest Pointe Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(e) **Association Legal Instruments** means this Declaration and all exhibits hereto, including the Association's Bylaws, and the plats, all as may be supplemented or amended.

(f) **Board of Directors or Board** means the elected body responsible for management and operation of the Association.

(g) **Bylaws** mean the Bylaws of Harvest Pointe Homeowners Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference.

(h) **Common Property** means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(i) **Common Expenses** mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

(j) **Community-Wide Standard** means the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board and the ACC.

(k) **Domestic Partner** shall mean any adult who cohabitates with an Owner, and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's Secretary. A person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.

- (l) **Effective Date** means the date that this Declaration is recorded in the Cobb County, Georgia land records.
- (m) **Electronic Record** means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form.
- (n) **Electronic Signature** means a signature created, transmitted received, or stored by electronic means and includes but is not limited to a Secure Electronic Signature.
- (o) **Eligible Mortgage Holder** means a holder of a first Mortgage secured by a Lot who has requested in writing notice of certain items under Paragraph 15(c) hereof.
- (p) **Lot** means a portion of the Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property, or amendments or supplements thereto, recorded in the Cobb County, Georgia land records.
- (q) **Majority** means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.
- (r) **Mortgage** means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.
- (s) **Mortgagee or Mortgage Holder** means the holder of any Mortgage.
- (t) **Occupant** means any Person occupying all or any portion of a dwelling on a Lot as his or her primary or principal residence for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- (u) **Officer** means an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.
- (v) **Owner** means the record title holder of a Lot, but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Lot shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Lot.
- (w) **Person** means any individual, corporation, firm, association, partnership, trust, or other legal entity.
- (x) **Property** means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.
- (y) **Secure Electronic Signature** means an electronic or digital method executed or adopted by a party with the intent to be bound by our to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed, the Electronic Signature is invalidated.

### 3. **LOCATION, PROPERTY DESCRIPTION, AND PLATS.**

The Property subject to this Declaration and the Act is located in Land Lots 852 and 925 of the 19th District, 2<sup>nd</sup> Section, and Land Lot 25 of the 17<sup>th</sup> District, 2<sup>nd</sup> Section, of Cobb County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein

by this reference. Plats of survey relating to the Property have been filed in Plat Book 150, Page 97, of the Cobb County, Georgia records. The plats of survey are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

4. **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.**

(a) **Membership.** Every Owner shall be deemed to have a membership in the Association. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse or Domestic Partner, but in no event shall more than one (1) vote be cast or more than one (1) office held for each Lot owned.

(b) **Voting.** Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

5. **ALLOCATION OF LIABILITY FOR COMMON EXPENSES.**

(a) **General Allocations.** Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots equally.

(b) **Specific Special Assessments.** Notwithstanding the above, the Board of Directors shall have the power to levy specific special assessments pursuant to this Paragraph and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

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

(ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot(s), including attorney's fees incurred by the Association in enforcing the Declaration, Bylaws or Association rules.

For purposes of this subparagraph, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

6. **ASSOCIATION RIGHTS AND RESTRICTIONS.**

The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have:

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

(b) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, suspending use and voting privileges, and

suspending services paid for as a Common Expense, as provided herein and in Section 44-3-223 of the Act. These powers, however, shall not limit any other legal means of enforcing such documents or provisions by either the Association or, in an appropriate case, by an aggrieved Owner;

(c) to grant permits, licenses, utility easements, and other easements, permits or licenses necessary for the proper maintenance or operation of the Property under, through or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Property;

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

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

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

(g) to permanently or temporarily close access to any portion of the Common Property with, except in emergency situations, thirty (30) days prior notice to all Owners. However, except for seasonal closing of the pool, the Owners may re-open the closed Common Property by a majority vote of the total Association vote, cast at a duly called special or annual meeting;

(h) to enter onto Lots, but not into dwellings on Lots, for maintenance, emergency, security, or safety purposes, or otherwise to discharge or exercise its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, officers, agents, employees or managers. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot. No Person exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights, and failure to exercise any such rights or to exercise such rights in a timely manner shall not create liability to any such Person, it being agreed that no such duty exists; and

(i) to acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

## 7. ASSESSMENTS.

(a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses 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, as may be authorized by the Board.

(b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments provided for below; (iii) Capital Contribution Assessments provided for below, and (iv) specific special assessments levied by the Board hereunder against any particular Lot, including, but not limited to, reasonable fines imposed hereunder and assessments levied under Paragraph 5(b) hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be

obligated to, record a notice of such lien in the Cobb County, Georgia records evidencing the lien created under the Act and this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The lien provided for herein shall have priority as provided in the Act.

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

(i) If the annual assessment or any part or installment thereof is not paid in full within fifteen (15) days of the due date, or such later date as may be provided by the Board, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per annum, or such higher rate as permitted by the Act, shall accrue from the due date.

(ii) If part payment of assessments and related charges is made, the amount received may be applied by the Board, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.

(iii) If the Board permits payment of the annual assessments or any special assessment in installments, and assessments, fines or other charges, or any part thereof, due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, then the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment and any special assessment with thirty (30) days written notice. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in installments for that fiscal year, and of paying any special assessment in installments, unless reinstated in the Board's discretion.

(iv) If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Common Property (provided, however, the Board may not deny ingress or egress to or from the Lot).

(d) **Computation of Operating Budget and Assessment.** Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Property during the coming year, and the Board shall establish the annual assessment or installments for the coming year. The Board shall cause the budget and notice of the assessment(s) to be delivered to each member at least twenty (21) days prior to the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a duly called Association annual meeting by a vote of a majority of the total Association membership. If a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. However, the Board may propose a new or adjusted budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the Bylaws for special meetings, the new or adjusted budget and assessment shall take effect without a meeting of the members.



The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of Common Expenses on which the Board may base the annual assessments.

(e) **Special Assessments.** In addition to the annual assessment provided for in subparagraph (b) above and assessments authorized under Paragraphs 5(b) and 9(b) hereof, the Board may at any time levy a special assessment against all Owners, with notice thereof sent to all Owners. However, any special assessment which would cause the total of special assessments levied against any Lot in one calendar year to exceed one hundred (\$100.00) dollars first must be approved by at least two-thirds (2/3) of those Owners either voting by ballot or written consent under Article II, Section 8 of the Bylaws, or present or represented by proxy at a duly called special or annual meeting of the members, notice of which shall specify that purpose.

(f) **Capital Budget and Contribution.** The Board may prepare an annual or multi-year capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in subparagraph (d) above.

(g) **Capital Contribution Assessment Upon Transfer of Lots.** In addition to the annual, specific, special and other assessments provided for herein, the purchaser or grantee of every Lot shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Capital Contribution Assessment") upon any and each conveyance or transfer of the Lot to any person other than to the spouse or heir of the Owner. For the fiscal year in which this Declaration is recorded in the Cobb County, Georgia land records, the Capital Contribution Assessment shall be two hundred (\$200) dollars. Thereafter, the Capital Contribution Assessment may be increased by the Board by not more than five (5%) percent above the previous year's Capital Contribution Assessment, or with the approval of a majority of the eligible association vote if such increase exceeds such amount. The Capital Contribution Assessment shall not constitute an advance payment of annual assessments. The Capital Contribution Assessment shall be due and payable at the time of each such conveyance or transfer, and the Assessment shall be collected at the closing of each such conveyance or transfer.

(h) **Statement of Account.** Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as may be authorized under the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

(i) **Surplus Funds and Common Profits.** Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the Board's option, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners, or added to the Association's reserve account.

## 8. **INSURANCE.**

(a) **Hazard Insurance on Common Property.** The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board, in its discretion, may purchase "all-risk" coverage in like amounts.

(b) **Association Liability and Directors' and Officers' Liability Insurance.** The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million (\$1,000,000.00) dollars.

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

(d) **Policy Terms.** All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (ii) below. Such insurance shall be governed by the provisions hereinafter set forth:

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

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

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

(iv) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(v) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available, and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Property is located.

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

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

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

(3) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;

(4) a provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal 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;

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

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

(e) **Additional Association Insurance.** In addition to the other insurance required by this Paragraph, 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 or dishonesty insurance. The amount of fidelity coverage or dishonesty insurance shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

(f) **Individual Lot Owner Insurance.** Each Owner should carry blanket all-risk casualty insurance, if reasonably available, or if not reasonably available, fire and extended coverage, on his or her Lot and structures constructed thereon meeting the same requirements as set forth in subparagraphs (a) and (c) of this Paragraph for insurance on the Common Property. Each Owner further covenants and agrees that, in the event of damage and destruction of structures on his Lot, the Owner shall either: (1) promptly repair or reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Paragraph 10 of this Declaration, or (2) clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction of any structures on the Lot, and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

9. **REPAIR AND RECONSTRUCTION AFTER CASUALTY DAMAGE.**

In the event of damage to or destruction of all or any part of the Property insured by the Association as a result of fire or other casualty, unless eighty (80%) percent of the Lot Owners vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Lot Owner with respect to the distribution of proceeds to any such Lot.

(a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to portions of the Property insured by the Association, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) **Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Paragraph 7(e) above. If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Property was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board.

(d) **Encroachments.** Encroachments upon or in favor of Lots which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Lot Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Property was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) **Construction Fund.** The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph, to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), Owners and/or personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

## 10. **ARCHITECTURAL CONTROLS.**

(a) **Architectural Standards.** Except as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining written approval of the Architectural Control Committee ("ACC"),:

- (i) make any encroachment onto the Common Property,
- (ii) construct any dwelling or other improvement on a Lot,
- (iii) make any exterior change, alteration or construction on a Lot (including regrading or significant landscaping modifications, and including painting or repainting of the exterior of homes, even if in the same colors as originally painted), or any alteration of the Lot which affects the exterior appearance of the Lot, or
- (iv) erect, place or post any object, sign, clothesline, playground equipment, light, storm door or window, artificial vegetation, exterior sculpture, fountains, flags or other thing on the exterior of the Lot, on the dwelling on the Lot, in any windows of the dwelling (other than appropriate window treatments permitted under Paragraph 11 hereof), or on any Common Property.

The standard for approval of such improvements shall include, but not be limited to: (1) aesthetic consideration, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the Board or ACC, (4) harmony with the external design of the

existing buildings, Lots and structures, and the location in relation to surrounding structures and topography, and (5) any other matter deemed to be relevant or appropriate by the Board or ACC.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. Except as may otherwise be determined by the Board, the ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations. The Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property alterations or additions.

To ensure compliance with the Community-Wide Standards, Owners must obtain ACC approval hereunder even for repainting of homes in the same colors as originally painted, as the original colors may not have been or be in compliance with Community-Wide Standards.

The ACC or the Board, subject to this subparagraph (a), may allow such encroachments on the Common Property as it deems acceptable.

(b) **Required Action by Board or ACC.** If the Board or ACC fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the Board or ACC may reasonably require have been submitted, then the Owner submitting the application may issue written notice, by certified mail, to the Association president, informing of the Owner's intent to proceed with the modification as identified in the application, unless the Association issues a written disapproval of the application within ten (10) days of receipt of the Owner's notice. If the Board fails to issue such written disapproval within that ten (10) day period, then its approval will not be required and this subparagraph will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, Bylaws or Association rules, or of any applicable zoning or other laws.

(c) **Architectural Control Committee.** The Architectural Control Committee shall constitute a standing committee of the Association. The ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards.

(d) **Appeal.** If the ACC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. The Board shall rule on the appeal within forty-five (45) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within ten (10) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.

(e) **Condition of Approval.** As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

(f) **Limitation of Liability.** Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any Lot, nor may any action be brought against the Association, the Board, the ACC, or any member thereof, for any such injury, damage or loss.

(g) **No Waiver of Future Approvals.** Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(h) **Enforcement.** Any construction, alteration or other work done in violation of this Paragraph, the Declaration, the Bylaws, the design standards or any applicable zoning regulations shall be deemed to be nonconforming. Upon written request from the Board, a violating Owner shall, at his or her own cost and expense, remove such nonconforming construction, alteration or other work and restore the property to substantially the same condition as existed prior to such construction, alteration or work. Should the Owner fail to do so, the Board or its designees shall have the right, in addition to all other available remedies, to enter the property, remove the violation and restore the property, or obtain a court order compelling the violating Owner to do so. All costs thereof, including reasonable attorney's fees, may be assessed against such Lot.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the ACC. All costs of any such action, including reasonable attorney's fees, may be assessed against such Lot. Furthermore, the Board shall have the authority to record in the Cobb County land records notices of violation of the provisions of this Paragraph.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remains 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, or the Board may, at any time, remove the unauthorized or unapproved modification.

(i) **Commencement and Completion of Construction.** All improvements approved by the ACC hereunder must be commenced within one hundred eighty (180) days from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within ninety (90) days of commencement.

## 11. **USE RESTRICTIONS.**

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

Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

Use restrictions regarding use of Lots and the Common Property are as follows and also as may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws.

(a) Use of Lots.

(i) Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within the dwelling so long as:

- (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the dwelling;
- (2) the business activity does not involve visitation of the dwelling by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential dwelling without business activity;
- (3) the business activity conforms to all zoning requirements for the Property;
- (4) the business activity does not increase traffic in the Property in excess of what would normally be expected for residential dwellings in the Property without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
- (5) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (6) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as determined in Board's discretion; and
- (7) the business activity does not result in a materially greater use of common area facilities or Association services.

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

(ii) Number of Occupants. The maximum number of Occupants in a dwelling on a Lot shall be limited to two (2) people per bedroom in the dwelling. "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a dwelling on the Effective Date hereof. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the

dwelling on the Lot. The designated person(s) to occupy the dwelling may not be changed more frequently than once every six (6) months.

(b) **Subdivision of Lots and Outbuildings.** No Lot may be subdivided into a smaller Lot and no structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected or used by any Owner or Occupant on any portion of the Property, at any time, either temporarily or permanently, except with written Board approval.

(c) **Use of Common Property.** There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written Board consent, except as specifically provided herein.

With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Property hereunder shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

(d) **Prohibition of Damage, Nuisance and Noise.** Without prior written Board consent, nothing shall be done or kept on the Property or any part thereof which would increase the rate of insurance on the Property or any Lot or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

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

(i) The use of any alarm, equipment or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations, if such sounds can be heard or vibrations felt in the normal course of activities from within a dwelling on any other Lot;

(ii) Any threatening or intimidating conduct towards any resident, guest or pet at the Property;

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

(iv) Any raucous behavior, insobriety, fighting, or repeated screaming on the Common Property, or on a Lot if such conduct can be heard in the normal course of activities in any other dwelling on any other Lot;

(v) Any excessively loud play or playground activities outside of a Unit, or within a Unit if such conduct can be heard in the normal course of activities in any other Unit;

(vi) Any conduct which creates any noxious odor, if such odor can be detected in the normal course of activities on any other Lot;



(vii) Any similar action or activity on the Property which unreasonably interferes with the peaceful use and enjoyment of other Lots or the Common Property by any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot;

(viii) Any construction or similar activities on a Lot, between the hours of 9:00 p.m. and 7:30 a.m., which can be heard from within a dwelling on any other Lot; or

(ix) Any incessant or excessive pet noises, including dog barking, if such conduct can be heard in the normal course of activities in any other dwelling on a Lot.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Georgia law.

No Lot Owner or Occupant may use or allow the use of the Lot or the Common Areas in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Lot that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Property or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in the Property, without prior written consent of all Association members and their Mortgagees.

No damage to or waste of the Common Areas, or any part thereof, shall be permitted by any Owner or any Occupant, guest or invitee of any Owner. Each Owner and Occupant shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner or Occupant, or the Owner's or Occupant's guest or invitee.

(e) **Firearms and Fireworks.** The display or discharge of firearms or fireworks on the Common Property is prohibited; provided, however, that the display of lawful firearms on the Common Property 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. Section 25-10-1.

(f) **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, as determined by the Board.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors in areas which are not fully enclosed by a fence. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Property without prior written Board approval as provided in Paragraph 10 hereof. Feces left by pets upon the Common Property or on any other Lot must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs may be brought onto or kept at the Property at any time. No dogs determined in the sole discretion of the Board to be dangerous dogs may be brought onto or kept on the Property at any time by any Lot Owner, Occupant, or guest of an Owner or Occupant. Any pet which endangers the health of any Owner, Occupant or pet of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the

Board's sole discretion. must be permanently removed from the Property upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

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

(g) **Parking.** No Owner or Occupant may keep or bring onto the Property more than a reasonable number of vehicles per Lot at any time, as determined by the Board; provided, however, the Board may adopt reasonable rules limiting the number of vehicles which may be parked at the Property. Vehicles only may be parked in garages, driveways or other areas authorized in writing by the Board.

Disabled and stored vehicles are prohibited from being parked on the Property, except in garages or otherwise with Board approval. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains in the same location on the Property, other than in a garage, for fourteen (14) consecutive days or longer without being driven.

Boats, go-carts, trailers, buses, panel trucks, trucks with a cargo load capacity of one (1) ton or more (excluding towing capacity), vans (excluding mini-vans and sport utility vehicles used as passenger vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes and containing visible evidence of commercial use (such as tool boxes, tool racks, business decals or signs, or other visible business evidence), and vehicles with commercial writings or signs on their exteriors are also prohibited from being parked on a Lot or on the Property, except: (1) in garages or as otherwise approved by the Board, or (2), in the case of service vehicles, on a temporary basis during daytime business hours or during emergencies for the purpose of serving a Lot. Additionally, the Board may adopt regulations permitting short-term parking of recreational vehicles and/or boats on the Lot to accommodate loading, unloading and/or preparing for trips or occasional use of such vehicles or boats.

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

If a vehicle is parked on any grassy area or other area on a lot or the Common Property not specifically designated by the Board for parking, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

(h) **Use of Garages.** If garage space is available, Owners and Occupants should park their cars and other motor vehicles in the garage before parking in the driveway. While occasional driveway parking is acceptable, the intent of this provision is to prohibit frequent or recurring parking in driveways (as may be

determined by Board resolution) when garage space is available. Garage doors also should remain closed when not in use for ingress, egress or garage use, or when the Owner or Occupant is not outside on the Lot, and the Board shall be authorized to establish reasonable regulations further defining this provision. To minimize the necessity of driveway parking in the community, garages shall be maintained in a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible; provided, however, that all garage conversions in existence at the time of the adoption of this Declaration, and made in compliance with all of the terms of the Original Declaration, shall not constitute a violation of this requirement.

(i) **Abandoned Personal Property.** Personal property, other than an automobile as provided for in subparagraph (g) of this Paragraph, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's dwelling, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

(j) **Signs.** Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property (including any Lot, the Common Property or any right-of-way between public streets and Lots or Common Property) without the prior written consent of the Board or its designee, except that two (2) professional security signs not to exceed six (6") inches by six (6") inches each in size may be displayed from within a dwelling on a Lot and one (1) professionally lettered "For Sale" sign not to exceed two (2') feet by two (2') feet in size may be displayed from within a dwelling on a Lot being offered for sale. Except as otherwise provided by the Board, authorized "For Sale" signs hereunder may be erected at the entrance to the Property only from Friday at 5:30 p.m. until the immediately following Sunday at 5:30 p.m., but only a single such sign may be erected per Lot for sale. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing open houses, births, birthdays or other events for limited periods of time.

(k) **Rubbish, Trash, and Garbage.** All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. The Board may establish regulations regarding placement of trash cans for pick-up and/or storage. Unless otherwise provided or authorized by the Board, trash cans, wood piles and similar items will be stored only in an area on the lot screened from view by neighbors and from the street.

(l) **Impairment of Dwellings and Easements.** An Owner shall do no act nor any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditaments, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

(m) **Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause

disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property, except within a dwelling. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and bicycles may be kept on the patio or deck serving the Lot.

(n) **Garage Sales.** No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Property without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

(o) **Window Treatments.** Unless otherwise approved in writing by the Board, all windows on a dwelling which are intended to be operable shall have window treatments, and any portion thereof visible from outside the dwelling shall be white or off-white in color.

(p) **Antennas and Satellite Dishes.** No transmission antenna, of any kind, may be erected anywhere on the Property without written approval of the Board of Directors or the Architectural Control Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Property, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as provided in this subparagraph, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Property, whether attached to a home or structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

(q) **Removal of Trees.** No living tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot unless such removal is in conformity with approved landscaping plans under Paragraph 10 hereof or with written standards which may be established by the ACC hereunder.

(r) **Basketball Goals.** Except with written Board or ACC approval otherwise, portable basketball goals are permitted to remain on a Lot outside of a dwelling or garage only during the time period from Friday at noon until the immediately following Sunday evening at 8:00 p.m. At all other times, portable basketball goals must be stored in garages or locations on the Lot where screened from view from the streets and adjacent neighbors, or as otherwise approved by the Board or ACC. Basketball goals are not permitted on any streets in the Property. The Board may adopt additional standards regulating basketball goals at the Property.

## 12. **LEASING.**

(a) **Definition.** "Leasing" means the regular, exclusive occupancy of a Lot by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner, or (2) a person who occupies the Lot and entire dwelling as a roommate with the Owner or parent, child or spouse of the Owner, who is also occupying the Lot as his or her primary residence.

(b) **Leasing Provisions.** Leasing of Lots in the community is governed by the following provisions:

(i) **Notice.** At least seven (7) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. If a lease is disapproved, the Board shall notify the Owner of the action to be taken to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) **General.** Lots may be leased only in their entirety; no rooms or fractions of Lots may be leased without prior written Board approval, except for roommate situations authorized in subparagraph (a) above.

All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(iii) **Liability for Assessments; Compliance.** Each Owner covenants and agrees that any lease of a Lot executed after the Effective Date hereof shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(1) **Compliance with Declaration, Bylaws, and Rules and Regulations.** If a Lot is lease or occupied in violation of this Paragraph, then the Association's Board of Directors shall be authorized, in addition to all other available remedies, to terminate that lease and occupancy, to suspend all voting and/or Common Area use privileges of the Owner and any unauthorized tenant(s) or occupant(s), and/or to suspend all common services to the Lot paid for by the Association as a common expense, including water service to the Lot, subject to the provisions of this Declaration and the Bylaws.

The lessee shall comply with all provisions of the Declaration, Bylaws and Association rules and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants are fully liable and may be sanctioned for any such violation.

If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, fines may be levied hereunder against the lessee and/or the Owner, and such violation is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.

(2) **Liability for Assessments.** When an Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(e) **Applicability of this Paragraph.** Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Association, or by any first Mortgagee who becomes the Owner of a Lot

through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. Such parties shall be permitted to lease a Lot without first obtaining a permit in accordance with this Paragraph.

**13. SALE OF LOTS.**

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

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of a Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

**14. MAINTENANCE RESPONSIBILITY.**

(a) **Association's Responsibility.** According to a reasonable prioritization and/or schedule established by the Board, the Association shall maintain, keep in good repair, and, in the Board's discretion improve or alter the Common Property.

This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping grass areas, paving, walkways, buildings and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

Upon Board resolution and approval of a Majority of the members present or represented by proxy at a duly constituted meeting of the members, the Association may assume responsibility for providing additional exterior maintenance upon Lot improvements. Additionally, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners. All maintenance performed by the Association shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, unless such injury or damage results directly and solely from the negligence or gross negligence of the Association.

The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board.

(b) **Owner's Responsibility.** Each Owner shall maintain and keep his or her Lot, yard, dwelling and all improvements on the Lot in good repair, condition and order. Such maintenance shall include regular mowing, fertilizing and weeding of lawns, maintenance of plant and flower beds, and removal and replacement of dead or diseased trees. Dead or diseased trees may be removed without approval of the ACC under Paragraph 10 hereof, but the Owner shall provide the ACC with photographs or video documenting the death or disease of such tree(s), and the ACC may require the Owner to re-plant comparable trees to replace trees removed hereunder. In addition, each Owner shall maintain any public right of way located between the Owner's Lot and the curb of the street(s) bordering such Lot.

All maintenance to be performed by the Owner hereunder shall be performed consistent with this Declaration and the Community-Wide Standard established by the Board. Any maintenance which involves an exterior alteration shall require prior approval of the Board or its designee pursuant to Paragraph 10 of this Declaration.

Each Owner also shall also be obligated:

(i) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots.

(ii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

(iii) Not to make any alterations on any portion of the Lot which is required to be maintained by the Association or do anything with respect to the Lot which jeopardizes or impairs the safety or soundness of any Lot without first obtaining the written consent of the Board of Directors and all affected Lot Owners, nor shall any Owner impair any easement without first obtaining written consent of the Board and of the Lot Owner or Owners and their Mortgagees for whose benefit such easement exists.

(iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Lot Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Lot Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Lot Owner's next chargeable assessment.

(c) **Failure to Maintain.** If the Board determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be an assessment and lien against the Owner and the Lot. If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be

performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Lot, which shall become a lien against the Lot and shall be collected as provided herein for the collection of assessments.

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

## 15. **MORTGAGEE'S RIGHTS.**

(a) **Approval of Actions.** Unless at least two-thirds (2/3) of the first Mortgagees or Lot Owners give their consent, the Association shall not:

- (i) by act or omission seek to abandon or terminate the Property or the Association;
- (ii) change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (iii) partition or subdivide any Lot;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or rights-of-way for public purposes and the granting other easements for the benefit of the Association shall not be deemed a transfer within the meaning of this clause); or
- (v) use hazard insurance proceeds for losses to any portion of the Property (whether to Lots or to Common Property) for other than the repair, replacement, or reconstruction of such portion of the Property, except as provided in Paragraph 8(h) hereof.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required by the Association Legal Instruments for any of the actions contained in this Paragraph.

(b) **Liability for Assessments.** Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) **Right to Information.** Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

- (i) any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;



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

(iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

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

(e) **Leasing and Sales.** Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 12 and 13 governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

## 16. **GENERAL PROVISIONS.**

(a) **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 on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(b) **Dispute Resolution.** Any Lot 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 officer or director, or the property manager 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 not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

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

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

(e) **Electronic Records, Notices and Signatures.** Notwithstanding any other portion of this Declaration, records, signatures and notices shall not be denied validity or effectiveness hereunder solely on the

grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws shall govern the giving of all notices required by this Declaration.

**17. EMINENT DOMAIN.**

Whenever all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five (75%) percent of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Paragraph 9, 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.

**18. EASEMENTS.**

(a) **Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed or reconstructed thereon (in accordance with the terms of this Declaration), as such encroachments exist on the Effective Date hereof; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

(b) **Easements for Use and Enjoyment of Common Property.** Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to 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 Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;

(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 in the Property for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

(iii) the right of the Association to borrow money as may be set forth in the Bylaws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property.);

(iv) the right of the Association to grant permits, licenses or easements across the Common Property, as authorized in this Declaration or the Bylaws; and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association.

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

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

(d) **Easement for Entry.** The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board.

(e) **Easement for Entry.** The plats or surveys for the Property recorded in the Cobb County, Georgia land records may identify certain easements across Lots in favor of the Association for the existence and/or maintenance of entrance monuments, subdivision signs, walls, fences, landscaping and/or similar structures. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace, re-erect and improve any such items within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within such easements to keep them clean, attractive and uniform in appearance for the benefit of the Owners at the Property and the Association. Such easements shall be Common Property.

## 19. **AMENDMENTS.**

Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof, unless the Act permits amendment by a lesser percentage, in which case this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding a Majority of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and filed in the Cobb County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Cobb County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

**20. SEVERABILITY.**

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

**21. DURATION.**

The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

**22. PREPARER.**

This Declaration was prepared by Jay S. Lazega, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

IN WITNESS WHEREOF, the undersigned officers of Harvest Pointe Homeowners Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original By-Laws were duly adopted by the required majority of the Association and its membership, with any required notices duly given.

This 30 day of November, 2004.

**HARVEST POINTE HOMEOWNERS ASSOCIATION, INC.**

Sworn to and subscribed to before me this 30 day of November By: Wili  
2004

Wili (Seal)  
President

Gregg Shafer  
Witness

Attest: Jacqueline L. Lybette (Seal)  
Secretary

[CORPORATE SEAL]

Gregg Shafer  
Notary Public

