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Carolyn V. Sullivan Clerk

3K **7425** PG **110-153**

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RETURN TO: THE COOPER LAW FIRM, LLC, 122 BYRD WAY, WARNER ROBINS, GEORGIA 31088 **1313**

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR PORTIONS OF PHASES 1, 4 & 5 OF
THE SUBDIVISION KNOWN AS THE HAWK'S NEST**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR THE HAWK'S NEST ("Declaration") is made this 13th day of February, 2017, by **SKI DEVELOPMENT, LLC**, a Georgia **LIMITED LIABILITY COMPANY** (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the owner of certain real property in Houston County, Georgia, which is more particularly described on the attached Exhibit "A" (the "Property"), which is made a part hereof by reference.

Declarant intends to develop on certain land, including the Property, a development to be known as The Hawk's Nest (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Development by the recordation of this Declaration and amendments thereto. Declarant desires to provide a flexible and reasonable procedure for the overall construction of the Development and the interrelationship between the Association (as hereinafter defined) established pursuant to this Declaration, and any non-residential areas which may become a part of the Development. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration.

Declarant has caused, or will cause, the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

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Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration of Covenants, Restrictions and Easements, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The Covenants, Restrictions and Easements set forth herein shall run with the Property, shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

ARTICLE I DEFINITIONS

The following words, when used in this Declaration of Covenants, Restrictions and Easements, shall have the following meanings:

1. **Accessory Structure.** –“Accessory Structure” means a Structure, the use of which is ancillary to a House, including, a structure used for a playhouse, swimming pool, tennis court, a tool shed, a mailbox, a dog house or a garage,.
2. **Association.** “Association” means The Hawk’s Nest Homeowner’s Association, Inc. (a non-profit, non-stock, membership corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.
3. **Board.** “Board” means the Board of Directors of the Association.
4. **By-Laws.** “By-Laws” mean the By-Laws of the Association.
5. **Class B Member.** “Class B Member” shall mean the Declarant and any Owner who is not a Homeowner.
6. **Commencement Date.** “Commencement Date” means the date on which the first residence is sold to a third party other than Declarant or the builder of such Residence.
7. **Common Property.** “Common Property” means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.
8. **Common Expenses.** “Common Expenses” shall mean expenses incurred by the Association to provide for the security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC and this Declaration, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.
9. **Declarant.** “Declarant” means Ski Development, LLC, a Georgia limited liability company, and its successors-in-title and assigns, provided any such successors-in- title or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit “A”, or the real property which is intended to become part of the Development, and provided further, except in case of foreclosure, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the “Declarant” hereunder by the grantor of such conveyance, which grantor shall be the “Declarant” hereunder at the time of such conveyance; provided, further, upon such

designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the described in Exhibit "A" attached hereto, and which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

10. **Development.** "Development" shall mean: (1) all Property described in Section 22 of this Article; (2) additions to the Property as are subject to this Declaration or a subsequent Declaration; (3) Contiguous land to this Property or any other real property later added to the Development owned by Declarant or its successors or assigns that becomes subject to covenants that are substantially similar to this Declaration; and (4), all real property described and set forth in plats for any and all phases and sections of "The Hawk's Nest Subdivision," which are now or hereafter recorded in the real estate records of Houston County, Georgia.
11. **Development-Wide Standard.** "Development-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committee required or permitted to be established pursuant to the Declaration and By-Laws. Such determination, however, must be consistent with the Development- Wide Standard originally established by the Declarant.
12. **Dwelling.** "Dwelling" shall mean a single family home constructed on a Lot.
13. **Front Street Line.** "Front Street Line" shall mean for interior Lots, the boundary line of a Lot with the Street. For corner lots, the boundary line of the Lot with the street which has the shortest length. Where streets border the Lot on opposite sides, the street the house faces.
14. **Homeowner.** "Homeowner" shall mean the owner of a Residence.
15. **Interior Lot Line.** "Interior Lot Line" shall mean the boundary line of a Lot, which boundary line connects a front street line and a rear lot line, but does not abut a street.
16. **Lot.** "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Houston County, Georgia, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot.
17. **Member.** "Member" means any member of the Association who shall be all Lot Owners.
18. **Membership.** "Membership" means the collective total of all Members of the Association.
19. **New Board Date.** "New Board Date" shall mean the date on which the Declarant or his successor has appointed Homeowners to the Board as provided in Article III, Section 11 herein.
20. **Occupant.** "Occupant" shall mean any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
21. **Owner.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any portion of the Properties, but excluding any person

- or entity whose interest in the Property arises pursuant to a deed to secure debt, mortgage, or other similar instrument evidencing or securing indebtedness.
22. **Property.** "Property" means that certain real property hereinabove described together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article 10 hereof.
 23. **Rear Lot Line.** "Rear Lot Line" shall mean the boundary line which is not a Front Lot Line, Side Street Line or Interior Lot Line.
 24. **Residence.** "Residence" shall mean any Lot that has a structure situated upon it that is intended for independent use and occupancy as a residence for a single family. A structure and the land owned as a part thereof (the Lot) shall not become a Residence until (1) a certificate of occupancy shall have been issued by the appropriate governmental authorities as a prerequisite to the occupancy of such Residence and the Lot and structure located thereon shall have been conveyed to a third party other than the builder; (2) the certificate of occupancy have passed and the structure on the Lot is occupied by tenants; or (3) eighteen months after a certificate of occupancy is issued by the appropriate governmental authority. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a certificate of occupancy for the Residence.
 25. **Restrictions.** "Restrictions" mean all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.
 26. **Second ACC Date.** "Second ACC Date" means the date after the last lot is sold in the Property to a Homeowner or the only Lots remaining in the Property that are not owned by Homeowners have a certificate of occupancy that was issued more than eighteen months earlier, whichever date is earlier.
 27. **Side Street Line.** "Side Street Line" means the boundary line of a Lot which is adjacent to a street, but which is not the front street line.
 28. **Structure.** "Structure" means:
 - a. any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse, bathhouse, coop, cage, covered or uncovered patio, swimming pool, dock, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such lot;
 - b. any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and
 - c. any change in the grade at any point on a Lot of more than six(6) inches.

ARTICLE II ADDITIONAL PROPERTY AND COMMON PROPERTY

1. **Added Property.** The Declarant shall have the right to add additional property to the scheme of this Declaration without notice to or the consent of the owners of the several lots comprising the Property, which shall be accomplished by the filing for record in the County where the land lies of a Declaration or Amendment to this Declaration, which

shall extend the scheme of the covenants and of this Declaration to such additional property. The additional property to be so added shall be contiguous to The Development as it is then comprised; PROVIDED HOWEVER, that the Declaration or Amendment to this Declaration extending the scheme of this Declaration and the covenants and restrictions contained herein to the property which is so added may not alter or modify the Declaration as it applies to such additional property so as to materially and adversely affect the value of the existing Properties as then comprised; and, PROVIDED FURTHER, that the Declaration or Amendment shall not operate so as to render the provisions of this Declaration as applied to such additional property less restrictive than as applied to The Development prior to such Supplementary Declaration or Amendment. When this Declaration has been so amended by one or more Supplementary Declaration(s), the term "The Property" or "Development" as used herein shall be deemed to include The Property described herein together with such additional property as may be added thereby. The term "record title owners" as used herein shall thereafter be deemed to include the record title owners of all Property. Each Supplementary Declaration adding properties shall include a geographical description of the property added and shall designate said additional property by a designation including Section and Phase so as to differentiate each respective area from other Sections and Phases then included within The Development.

2. **Association Membership.** Owners of any real property that are added to the Development by Declarant or its successor and assigns shall be members of the Association and shall abide by the substantially the same covenants as those required in this Declaration. The Association shall be a master Association for all sections and phases of The Hawk's Nest Subdivision.
3. **Right of Enjoyment.** Every Owner shall have a non-exclusive right and easement to use and enjoy the Common Property, which said right shall be appurtenant to and shall pass with the title to every Lot upon transfer, provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section is subject to suspension by the Association as provided in Article VIII, Section 3. The Board shall have the right to promulgate rules and regulations governing the use of any Common Property. Provided however, no Owner shall have a right of easement over or across any other Owner's property for access or enjoyment of a pond or gazebo, except as may specifically be set forth on the recorded Plat of the Property.
4. **Rights of the Association.** The rights and privileges conferred in this Article shall be subject to the right, and where applicable, the obligation, of the Association acting through the Board to:
 - a. promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;
 - b. borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of the Common Property, and in aid thereof, to encumber by deed to secure debt, mortgage or other security interest, any or all of the

Association's property, including Common Property and revenues from assessments, user fees and other sources;

- c. grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;
 - d. dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency, or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;
 - e. charge reasonable fees in connection with the admission to and use of facilities or services by Members and non-members; provided that in setting any such fee, the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;
 - f. suspend the voting rights of any Member and the right of enjoyment granted or permitted by this article;
 - g. to sell, lease or otherwise convey all or any part of its properties and interests therein;
 - h. enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and
 - i. maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads and streets for Houston County, Georgia.
1. **Conveyance of Common Property by Declarant to Association.** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members.
 2. **Types of Common Property.** At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of the Members of the Association, be used for any difference purpose or purposes.
 3. **Delegation of Use.** Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, subject to the terms and conditions of this document, his right to use and enjoy the Common Property. Additionally, the

Association may provide that certain Common Property may only be used by Owners of certain phases and sections of the Development; provided, however, that if a certain phase or section of the Development is not allowed to enjoy certain Common Property, the Association may not charge any costs associated with that certain Common Property to Owners of that phase or section when developing the annual budget.

4. **Maintenance.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of (1) all roads, driveways, walks, parking areas and building and other improvements, if any, situated within the Common Property; (ii) such utility lines, pipes, plumbing, wire, conduits and systems which are a part of the Common Property; (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Property; and (iv) all fencing that borders adjoining major roads to the Property. The Association shall maintain grass and other landscaping located along or in the dedicated rights-of-way which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority. In addition, the Association shall maintain the entrance features of the Development. The foregoing maintenance shall be performed consistent with the Development-Wide Standard. The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit the Owners.

ARTICLE III ASSOCIATION

1. **Purposes, Powers and Duties of the Association.** The Association shall be formed as a non-profit corporation for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Development. To the extent, and only to the extent, necessary to carry out such purposes, the Association: (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code; and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.
2. **Membership in the Association.** Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements. The Association will be a master association for all Owners in all phases and sections of The Hawk's Nest. For purposes of voting there shall be two (2) classes of Members, as set forth in Section 3.
3. **Voting Rights.**
 - a. **Class A.** Each Owner of a Residence shall be a Class A Member and shall be entitled to one (1) Class A vote per Residence. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy

instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.

- b. **Class B.** The Class B members shall be the Declarant and any Owner who is not a Homeowner. If the Class B Members are entitled to vote, the Class B Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such Persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.
4. **Additional Phases.** The Development will be composed of Lots, which may be developed in phases containing unequal numbers of Lots. Each such phase, as developed, will be platted of record in the Office of the Clerk of the Superior Court of Houston County, Georgia, in accordance with this Declaration. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the Development plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth herein. In no event shall Class B Membership cease and be converted to Class A Membership until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subjected to this Declaration.
5. **Suspension of Membership.** The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:
 - a. shall be subject to the Right of Abatement, as defined in Article VIII Section 3 by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as hereinafter defined) within thirty (30) days after having received notice of the same;
 - b. shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or
 - c. shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in this Subsection, the suspension shall be for a period exceeding sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.
6. **Termination of Membership.** Membership shall cease only when a person ceases to be an Owner.
7. **Voting Procedures.** The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.
8. **Utility Easements.** There is hereby created in favor of the Association an easement upon, across, over, through and under all of the Common Property for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including

- but not limited to water, sewers, gas, telephones, electricity, television, cable or communications, lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Property and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Property and the Lots, as provided herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the property except as initially programmed and approved by the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement be a separate recordable document, the Association shall have the right to grant such easement on the Common Property without conflicting with the terms hereof.
9. **Insurance.** The Board, or its duly authorized agent, shall obtain such insurance policies upon the Common Property as the Board deems necessary or desirable in its sole discretion, the named insured on all policies of insurance shall be the Association. This duty is further set forth in Article X, Section 9.
10. **Notice and Quorum for Meetings.** Except for meetings taken with respect to the approval and/or disapproval of a general assessment or a special assessment, whenever this Declaration provides for a meeting of the record title owners of the lots or parcels comprising the Properties, such meeting may be called for the specified purpose on the request of the record title owners of not less than twenty percent (20%) of the lot or lots then comprising the Development. This request shall be delivered to the Association. "Notice" for the purposes of this Declaration shall be deemed to have been given when deposited with the United States Postal Service for mailing by First Class Mail, Registered or Certified, with adequate postage thereon to assure delivery, addressed to the Association or electronic mail addressed to the Association at the e-mail address provided to the Member with a read receipt received. The receipt of the Postal Service for such mailing or the electronic mail read receipt will be deemed sufficient proof of mailing, and such Notice shall be deemed to have been delivered on the third (3rd) business day following its mailing. The Association shall give all Owners notice of any meetings not less than ten days nor more than thirty days before a meeting. The presence of twenty percent (20%) of the Owners entitled to vote on a particular matter and, until the Class B Membership terminated, the declarant or the declarant's successor or assigns, shall constitute a quorum. The majority vote of all the Owners entitled to vote at the meeting, voting in person or by proxy, shall be binding on the Owners and the Association; provided, however, that until the Class B Membership ends, the assent of the Declarant or the Declarant's successors or assigns is necessary for any vote to be binding on the Owners and the Association.
11. **Board of Directors.** The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in the By-Laws of the Association. Declarant shall appoint the initial Board which will be initially comprised of three members. Until ninety percent (90%) of the Lots in the entire Development are owned by Homeowners, Declarant or its successors will appoint the Board members, should a member die, resign, or be removed by Declarant or its successor. Until ninety percent (90%) of the Lots in the entire Development are owned by Homeowners, Declarant or its successor may remove a director for any reason. Until ninety percent (90%) of the Lots in the entire Development are owned by Homeowners, the board members may also be removed by majority vote of the other Board members and

the assent of Declarant or Declarant's successors or assigns. Declarant may allow the Owners to hold elections for the Board at any time. When Declarant allows the Homeowners to elect their own Board, Declarant will no longer have the power to appoint board members. Declarant must allow the Homeowners to elect their own Board in no event later than the date on which ninety percent (90%) of the Lots in the entire Development, not just in one Phase or Section, are owned by Homeowners. Once a Board is populated by Homeowners, the number of Directors on the Board shall be five, unless otherwise changed by the Corporation Bylaws.

12. **Notice and Quorum for Elections.** Once the requirements for a Board which is managed by Homeowners are met in Section 11 *supra*, the Declarant will solicit candidates for the Board of the Association by notice provided to all Owners. Lot owners by signature of these covenants acknowledge that they each have the right to be a board member of the Association and that they each should contact the Declarant upon notification that the Board positions are open if the Owner desires a board position. Within sixty days from the date of the notice set forth in this section, the Declarant will send ballots to all Class A Members for the election of the Board of the Association. Provision of a ballot to elect the initial Board of the Association shall be provided by the Declarant. Provision of the ballot for the initial election shall be deemed to have been given when hand delivered, placed in the class A Member's mailbox, or, if the Class A Member does not currently occupy the lot in the subdivision, when deposited with the United States Postal Service for mailing by First Class Mail, Registered or Certified, with adequate postage thereon to assure delivery to the owner. The election ballots shall be distributed by the Declarant at least ten days before an election ballot is due. In each ballot, Declarant will list all the candidates for the Board, which number shall be at least five candidates. Declarant shall provide in the ballot a method for the ballots to be returned to the Declarant. There is no required quorum for the election of the initial Board. Each lot owner who is a Class A Member shall be allowed to vote for five different candidates in the election of the initial Board. A lot Owner may not vote for the same candidate more than once in the same election. There shall only be one ballot allowed per lot, such that if there is more than one owner of a lot, the owners of that lot can only submit one ballot for the board election. The top five candidates receiving the most number of votes for the Board positions shall be elected to the Board. The Board of the Association shall have the right to amend the Association Bylaws and designate which Board members hold which offices and set the procedure for the election or succession of future board members. The Bylaws must require that only one ballot per lot of a Class A member will be allowed for future board elections.

ARTICLE IV ASSESSMENTS

1. **Covenant for Assessments and Creation of Lien and Personal Obligation for Owners of Residences.** Each Owner of a Residence, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Residence, whether or not the covenants contained herein shall be expressed in any such deed, does hereby covenant and agree as follows:

- a. to pay the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;
 - b. to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;
 - c. to pay on a monthly basis directly to the electrical company providing electric service to the Development, the Owner's pro rata portion of the electric utility bills for the Development street lights;
 - d. to pay an initial assessment fee of \$300.00 ("Initial Assessment") at the time of purchase of the Lot. The Initial Assessment shall be payment for previous development of Common Property. The Initial Assessment shall be in addition to any annual or special assessment made with respect to such Lot for the calendar year during which the Initial Assessment is payable;
 - e. that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided hereof and costs of collection including reasonable attorneys' fees;
 - f. that such continuing charge and lien on such Lot binds such Lot in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter arise in any manner or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as by applicable law are made superior, and (ii) all deeds to secure debt given to secure a loan, the proceeds of which are used (1) to purchase a Residence or Residences (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of such Structures;
 - g. that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot from liability for any assessment thereafter assessed;
 - h. that all annual, initial, electric, special and specific assessments (together with interest thereon as provided for in this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in this Declaration) a personal obligation which will survive any sale or transfer of the Lot owned by him.
2. **Covenant for Assessments and Creation of Lien and Personal Obligation for Class B Members.** Each Class B Member except Declarant, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, does hereby covenant and agree as follows:
- a. as long as the Class B Members were allowed the opportunity to vote on the special assessment at issue, to pay to the Association any special assessments

- for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Owners;
- b. to pay on a monthly basis directly to the electrical company providing electric service to the Development, the Owner's pro rata portion of the electric utility bills for the Development street lights;
 - c. to pay the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him if the Lot is considered a Residence for at least 30 days prior to the beginning of the calendar year for which an annual assessment is levied pursuant to the definition of "Residence" provided in Article I.
 - d. that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided hereof and costs of collection including reasonable attorneys' fees;
 - e. that such continuing charge and lien on such Lot binds said Lot in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter arise in any manner or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as by applicable law are made superior, and (ii) all deeds to secure debt given to secure a loan, the proceeds of which are used (1) to purchase a Lot (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of such Structures;
 - f. that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Owner from liability for any assessment thereafter assessed;
 - g. that all general, electric, special and specific assessments (together with interest thereon as provided in this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot as provided in this Declaration) a personal obligation which will survive any sale or transfer of the Lot owned by him.
3. **Purpose of Assessment.** The assessments levied by the Association shall be used for the purpose of providing for the common good and general welfare of the people of the community of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC and this Declaration, the payment of operating costs and expenses of the Association, the maintenance of fencing bordering Feagin Mill Road, maintenance of the entrance areas, maintenance of the detention ponds or vacant lots in the Subdivision, and the payment of all principal and interest when due on all debts owed by the Association, all as may be more specifically authorized from time to time by the Board.

4. **Accumulation of Funds Permitted.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem desirable for the greater financial security of the Association and the effectuation of its purposes.
5. **Limitations on Annual Assessments.**
 - a. Commencing with the first Assessment Year after the date on which the Declarant or his successor has appointed Homeowners to the Board as provided in Article III, Section 11 ("New Board Date") and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year not more than ten percent (10%) above the annual assessment for the previous Assessment Year without a vote of the Membership.
 - b. Commencing with the first Assessment Year after the New Board Date and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than ten percent (10%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.
6. **Annual Assessment Prior to the New Board Date and Initiation Fee.**
 - a. Beginning on the date each Lot is sold, transferred, or leased to a party other than Declarant or a Class B Member (the "Commencement Date"), and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Owner who is not a Class B Member shall be assessed and pay to the Association an annual assessment of Two Hundred Dollars and No Cents (\$200.00) per Residence to be payable in One (1) annual installment. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date.
 - b. The date on which each assessment is due shall be December 1st of the preceding calendar year.
 - c. Prior to the New Board Date, the Board shall remit any assessments to Declarant who may keep the funds in its general account. Said funds shall be used by Declarant or the Board for the purposes allowed as set forth herein and specifically in section 2 *supra*. However, Declarant shall not be required to provide Owners an accounting of the use of assessment funds.
7. **Annual Assessment After the New Board Date.** Beginning on the New Board Date, the annual assessment will be determined utilizing the following procedure:

- a. Each Owner who is not a Class B Member shall be assessed and pay to the Association a proportionate share of the actual costs incurred for maintenance, installation, repair, replacement and operation of the following (including without limitation thereto the cost of utilities, third-party contracts for maintenance, repair or replacement): (i) Subdivision entrances and planted buffers including, but without limitation thereto, shrubbery, signage (including decorative street signs), fences, buildings, improvements, equipment, irrigation systems, security lights, and other similar improvements enhancing the entrances to the Subdivision which are not maintained by any governmental authority or agency, including, but without limitation thereto, areas set aside by the Declarant for common usage and maintenance for the Property; (ii) detention ponds, retention ponds, streets, sidewalks and pedestrian walking/jogging areas located within the rights-of-way of the public streets within the Subdivision to the extent that same are not maintained by any governmental authority or agency; (iii) purchase of insurance by the Association; (iv) the repair and replacement of improvements on the Common Area; (v) payment of all insurance premiums and all costs and expenses incidental in the Operation and administration of the Association and establishment and maintenance of a reasonable reserve fund or funds; (vi) property taxes and assessments imposed by any governmental authority with respect to the foregoing; (vii) payment of all principal and interest when due on all debts owed by the Association; (viii) cost of maintain any fencing bordering the perimeters of the Subdivision; and (ix) costs of enforcement of this Declaration and the Design Standards of the ACC and this Declaration.
- b. If certain Common Property is only for the enjoyment of certain phases and sections of the development, the Association must add to each entitled Class A Owner's annual assessment said Class A Owner's proportionate share of the maintenance, installation, repair, replacement and operation costs associated with that Common Property. The Association shall add the costs set forth in the subsection and divide them by the number of Class A Owners entitled to enjoy that certain Common Property. This will be the proportionate share of each entitled Class A Owner.
- c. The assessments levied and collected by the Association pursuant to this Section shall be held, invested and disbursed by the Association for the uses and purposes described in this Section above or such further purposes promoting the comfort, health, safety and welfare of the Owners of Lots in the Properties as may be determined by the Association.
- d. The assessments shall be collected by the Association and maintained in one or more certificates of deposit, money market account, or other interest-bearing deposit in a banking institution whose deposits are insured by the Federal Deposit Insurance Corporation or Federal Savings & Loan Insurance Corporation, and disbursed by the Association when needed to pay the costs and expenses contemplated hereby. The Association shall provide an accounting of the receipt and disbursement of the funds upon the reasonable request of an Owner, but shall not be required to furnish such information more than once during each calendar year.

- e. If the Association incurs ongoing Common Expenses, it shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association for the coming year, such budget to include a capital contribution of reserve account in accordance with the capital needs of the Association. The budget and the proposed annual assessments to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual meeting. The annual assessments shall be equally divided among the Class A Members so that the annual assessments shall be the same for each Class A Member. Lots owned by Class B Members, who are not subject to assessments, shall not be considered when determining the assessment for each Lot.
 - f. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by a majority vote of the Owners voting in person or proxy at such meeting. A majority of the Owners must disapprove the proposed budget and not simply a majority of the Owners present at the meeting. In the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, and then until a budget has been determined as provided for herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If the assessment is approved, then it shall be binding and enforceable against each Owner. If any budget at any time is disapproved, the Board may call a meeting of the Association for the purpose of proposing another budget, as long as the meeting and the proposed budget are presented to the Owners more than thirty days before the date in which the Lot Assessment is due.
 - g. The Lot Assessment Amount for each calendar year shall be payable on December 1st of the preceding calendar year. Assessments shall be prorated from the date on which the Dwelling located on the Lot is first occupied by a Homeowner or tenant of such Homeowner or eighteen months after a certificate of occupancy is issued in the case of a Lot owned by a Class B member. Any assessment, or portion thereof, not paid when due shall be delinquent; provided, however, that if the Owner is a Class B Member the portion of the year that there is no general assessment required for the Lot during the time period that the Lot was owned by the Class B Member. If the same is not paid within five (5) days after the due date, then a late charge equal to ten percent (10%) of the amount thereof shall accrue. Said late fee shall also be due and payable to the Association. Any assessment or portion thereof not paid when due shall bear interest from the date of delinquency until paid at an interest rate of fifteen percent (15%) per annum or the maximum legal rate applicable to judgments in the State of Georgia, whichever is lesser.
8. **Maintenance Assessment.** Each Owner, except Declarant, shall be assessed and pay to the Association any costs, including attorney's fees and court costs, incurred by the Declarant or Association in the performance of maintenance of an Owner's Lot or Lots pursuant to this Declaration.
 9. **Special Assessments.** The Board can determine whether a special assessment will be for Class A members only or for Class A and Class B members, but in no event shall it include Declarant. In addition to the annual assessments authorized above, the

Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of at least two thirds (2/3) of the Class A members if the assessment is only for Class A members, and, if the assessment is for Class A and Class B members, at least eighty percent of Class A and Class B members, voting in person or by proxy at a meeting duly called for such a purpose; provided, however, that in no event shall the assessment be made on any property owned by Declarant.

- a. Special assessments may also be levied by the Association if for any reason the annual assessments prove inadequate to defray the expenses of the Association in fulfilling its duties and obligations hereunder, subject to the consent of the Class A members as set forth above.
 - b. Special assessments must be uniformly applied to all Owners who were given the opportunity to vote for the special assessment, except that they shall not apply to Declarant.
 - c. Written notice of any meeting called for the purpose of taking any action authorized under Section 9 shall be sent to all members entitled to vote not less than ten (10) days nor more than thirty (30) days in advance of the meeting or vote by other means. At the vote on the special assessment, the vote or proxies of fifty percent (50%) of all the Owners entitled to vote shall constitute a quorum. If the required quorum is not met, another election may be called subject to the same notice requirements, and the required quorum at the subsequent election shall be one-half of the required quorums at the preceding meeting. No such subsequent election shall be held less than fifteen days after the first election.
10. **Specific Assessments.** The Board shall have the power to specifically assess certain Residences that are solely benefitted by expenses incurred by the Association as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.
11. **Late Fees and Interest.** For any and all assessments or fines assessed against an Owner, if the same is not paid within five (5) days after the due date, then a late charge equal to ten percent (10%) of the amount thereof shall accrue. Said late fee shall also be due and payable to the Association. Any assessment or fine or portion thereof not paid when due shall bear interest from the date of delinquency until paid at an interest rate of fifteen percent (15%) per annum or the maximum legal rate applicable to judgments in the State of Georgia, whichever is lesser.
12. **Fines.** Any fines imposed by the Association against a specific Owner for noncompliance with the Covenants and any attorneys' fees and costs of enforcement connected with said fines shall constitute an assessment against said Owner and be subject to the provisions for default as to non-payment of an assessment as set forth in this Article IV, Section 13.

13. **Remedies for Nonpayment of Assessments.** The Association may suspend any voting rights of the Owner during the period in which any assessment or fine, including interest, late fees, and attorney's fees/court costs, payable by such Owner, or portion thereof, remains unpaid, may bring an action at law against the Owner personally obligated to pay the same, may place a lien on the Owner's property for the amount of unpaid assessments or fines, attorney's fees, interest, late fees, and court costs, and/or may foreclose the lien against such Owner's Lot. If the Association has to incur legal costs to enforce the assessment and/or fine or a lien is placed on the Owner's Lot, late charges, interest, costs and attorney's fees in an amount equal to the greater of \$500.00 or fifteen percent (15%) of the past due amount plus interest due thereon and court filing fees, may be added to the lien to the amount of such assessment or portion thereof which is past due. All payments on account shall be applied first to late charges, then interest, then filing fees, then attorney's fees, and then to the assessment amount or fine first due. Each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien against his Lot in the same manner as other liens for the improvement of real property. Any legal action brought by the Association to enforce such lien against such Lot shall be commenced within one (1) year from the time the assessment became due. Failure to bring such an action within such time shall cause the lien to be extinguished as to such assessment, or portion thereof, more than one (1) year past due, but shall not bar an action against the Owner(s) obligated to pay the same in accordance with the provisions hereof. The Association shall have the power to bid in the Lot at any judicial or foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Lot.
14. **Exemptions.** The assessments provided for herein shall not be applicable to Declarant or any sale of a lot, tract or parcel of the Subdivision made by a mortgagee who has financed the acquisition of, or improvements to, the subject Lot(s), whether such sale is made by the mortgagee in exercise of its rights under the foreclosure provisions of its security deed or is made by the mortgagee who has acquired the property as a result of such exercise of its foreclosure rights in order to dispose of the property subsequent to foreclosure.
- a. It is further provided that the annual assessments or assessments in which only Class A members had voting rights shall not be applicable to any Lot owned by the Declarant, nor to any Class B Member. Provided however, that the exemption set forth in this paragraph shall terminate as to each Class B Member who is not the Declarant or Declarant's successor at such time as any residence constructed on a Lot within the Subdivision is occupied or eighteen (18) months from the date of such transfer, whichever occurs first.
 - b. It is further provided that the following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use, (b) all Common Areas, (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption; and (d)

all Class B Members provided that the assessment is not a special assessment approved by two-thirds of the Class A and Class B members.

15. **Certificate of Payment.** Upon written demand by an Owner, the Association shall, within a reasonable period of time, issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interests and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate, and may require said charge payable prior to the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

1. **Designation of Committee.** The Architectural Control Committee for this Section ("ACC") shall consist of three members who shall be natural persons and shall be appointed by Declarant or its successors or assigns. The Members of the First ACC shall be Jeff Liszewski, Stacy Liszewski, and Taylor Liszewski. The mailing address for the Committee shall be 110 Latham Drive, Warner Robins, Georgia 31088. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this Declaration. As of the date of recordation of this Declaration, all privileges, powers, rights and authority of the Architectural Control Committee shall be vested in the aforementioned persons and exercised by them. Upon the death or resignation of an ACC member, the Declarant or its successors or assigns may appoint a successor member. After the last lot is sold in the Property to a Homeowner or the only Lots remaining in the Property that are not owned by Homeowners have a certificate of occupancy that was issued more than eighteen months earlier, whichever date is earlier ("Second ACC Date"), the members of the ACC shall be appointed by the Board.
2. **Removal of Committee Members.** After the Second ACC Date, any and all members of the ACC may be removed with or without cause by the majority vote of the record title owners of the total number of lots then subject to any restrictive covenants in the Development or the vote of Declarant. Said vote shall be taken after providing at least thirty (30) days written notice to all record title owners in the Development. The vote must be by written ballot that can be transmitted either through hand delivery, U.S. Mail, or e-mail delivery with a read receipt.
3. **Purpose, Powers and Duties of the ACC.** The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development and specifically the Property's phase in the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding

Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including without limitation, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot. The ACC shall have the authority to pre-approve plans and specification for any Structures to be constructed on any Lot.

4. **Compensation.** The members of the ACC shall be reimbursed by the Association for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.
5. **Meetings.** The ACC shall hold regular meetings at least once every twelve (12) months or more often as established by the ACC. Special meetings may be called by any member. Regular and special meetings of the ACC shall be held at such times and at such places as the ACC may specify. Notice of each regular or special meeting of the ACC shall be electronically mailed to each member at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting, and shall constitute a waiver of any and all objections to the form and sufficiency of the notice of said meeting, any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except, when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. A quorum shall consist of two members of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all members of the ACC. Such consent shall have the same force and effect as a unanimous vote.
6. **Activities.** The ACC shall make findings and determinations, rulings and orders with respect to the conformity with the Restrictions set forth herein of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of the Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.
7. **Power of Approval.** Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by the resolution of the ACC. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC on its own motion or appeal by the applicant to the

ACC as provided in this Subsection. Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after the receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no even later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding. During the time period in which the ACC is reconsidering the matter, the ACC's decision shall be stayed and no action may be taken in accordance with said decision.

8. **Design Standards.** The ACC may from time to time, adopt, promulgate, amend revoke and enforce guidelines (the "Design Standards") for the purposes of:
 - a. governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
 - b. governing the procedure for such submission of plans and specifications;
 - c. establishing guidelines with respect to the approval and disapproval of (1) design features, architectural styles, exterior colors and materials, details of construction, location and size of structures (2) the size, location, type, coloration and appearance of any allowed signage, including without limitation "For Sale," "For Lease, and "For Rent" signs, and (3) all other matters that require approval by the ACC pursuant to this Declaration;
 - d. assuring the conformity and harmony of external design and general quality of the Development.
9. **Availability of Standards.** The ACC shall make a copy of its current Design Standards, as they may exist from time to time, readily available to Members and prospective Members of the Association, and to all applicants seeking the ACC's approval. Provided however, the expense of copying all or any portion of the written Design Standards shall be borne by the person or persons requesting a copy thereof.
10. **Submission of Plans and Specifications.** No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC including, but not limited to:
 - a. A topographical plat showing existing contour grades and showing the location of all improvements, structures, walks, sidewalks, patios, driveways, fences and walls. Existing and finished grades shall be shown at lot corners and at corners of proposed improvements. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the lot contours is contemplated;
 - b. a foundation plan;
 - c. a floor plan;
 - d. Parking area and driveway plan;
 - e. Screening, including size, location, and method;
 - f. Utility connections;

- g. exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all back-filling and landscaping are completed;
 - h. specifications of materials, finishes and color schemes, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures;
 - i. landscaping plan, including walkways, fences and walls, elevation changes, watering systems vegetation and ground cover;
 - j. name of builder or contractor.
11. **Approval of Plans and Specifications.** Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed to be a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.
12. **Time for Construction.** Construction of a Structure on any Lot, or any approved alterations or other Structure shall commence within ninety (90) days from the approval of the plans and specifications by the ACC. The exterior of all Structures shall be completed within nine months after the construction of the same shall have been commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, floods, lightning, earthquakes or other casualties, and notwithstanding the foregoing provision, the exterior of all Structures shall be completed within one year after the construction of such Structure shall have commenced. During the time when construction is halted, the Owner and any builder shall use all reasonable means to keep the Lot reasonably free from construction debris and trash.
13. **Disapproval of Plans and Specifications.** In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case, the ACC shall, upon request, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval. The ACC shall have the sole right and absolute discretion to disapprove any plans and specifications submitted pursuant to this Declaration for any reason, including but not limited to the following:
 - a. the failure to include information in such plans and specifications as may be reasonably requested;

- b. the failure of such plans or specifications to comply with this Declaration or the Design Standards;
 - c. any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards for the Development as set forth in the Design Standards, this Declaration, or the Development-Wide Standard, or (ii) as to location, to be incompatible with the topography, finished ground elevation and surrounding Structures.
14. **Obligation to Act.** The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.
15. **Inspection Rights.** Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times, enter upon any Lot or Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, as long as such inspection is carried out in accordance with the terms of this Article.
16. **Violations.** If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If the construction or alteration of any Structure or Lot shall not proceed with reasonable diligence toward completion once begun, said construction or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If, in the opinion of the ACC, such violation shall have occurred, the ACC shall notify the Association and the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Article VIII, Section 3 hereof.
17. **Certification of Compliance.** Upon completion of the installation, construction or alteration of any Structure or Lot in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure or Lot complies with such plans and specifications.

- a. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC. Any Certificate of Compliance issued in accordance with the provisions of this Article shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment.
 - b. The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation.
18. **Fee.** The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and of inspections performed pursuant to this Article. The fee shall be established from time to time by the ACC and may be published in the Design Standards.
19. **Disclaimer as to ACC Approval.** Plans and specifications are not reviewed for engineering or structural design or quality of materials and, by the Declarant approving such plans and specifications, neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to the Owner of property affected by these Restrictions by reason of mistake in judgment negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he or she will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims and covenants not to sue said persons or entities for any claim, demand, or cause of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.
20. **Variations.** Subject to the provisions of this Declaration limiting the right to amend or vary the terms and conditions hereof, the restrictions set out in this Instrument may be altered, varied or waived on an individual lot basis upon compliance with the following regulations and procedures, to-wit:
 - a. Any owner of any lot in said section desirous of securing a waiver or variance of said restriction shall request the same in writing and shall deliver said petition to any member of the Architectural Control Committee hereinbefore named;

- b. If the Architectural Control Committee, in the exercise of its sole discretion, approves of said variance, it shall notify the petitioner of the same in writing;
- c. The written approval of any requested alteration or variance by the Architectural Control Committee shall constitute absolute waiver of and shall otherwise void the restrictions contained in this paragraph relative to the subject lot;
- d. The waiver of the restrictions contained in this paragraph on any petitioned lot shall not constitute a waiver of said restriction on any other lot; and,
- e. Unless the written approval as outlined herein is secured, the restrictions contained in this paragraph shall be binding and of full force and effect. Provided, further that if the Architectural Control Committee fails to notify the petitioning landowner of its approval within thirty (30) days of its receipt of the request, said request shall be deemed to have been denied.

ARTICLE VI GENERAL COVENANTS AND RESTRICTIONS

1. **Application.** The covenants and restrictions contained in this Article 6 shall pertain and apply to all Lots and to all Structures erected, maintained or placed thereon.
2. **Single Family Residences.** Lots shall be used for single-family residences only and for no other purpose. Multi-family residential, town homes, duplexes, commercial, fraternity, sorority, club, and rooming houses are prohibited.
3. **Uniformity of Structures.** All Dwellings constructed in the development must be significantly uniform according to the following standards.
 - a. Mass - The visual relationship of architectural elements of various sizes to one another and to the immediate environment.
 - b. Proportion - the relationship of height to width, voids and solids, and the bulk of the structure relative to other nearby structures and parts of the whole.
 - c. Scale - the visual relationship of architectural and landscape elements to one another and to the immediate environment.
 - d. Colors and Materials - including siding, trim, doors, windows, gutters, downspouts, roofing, and all other architectural and site elements must be in context with their environment.
4. **Colors and Materials.** Colors that harmonize with the natural landscape are strongly encouraged. Muted shades are considered to be most appropriate. Muted shades of white are acceptable. Black and other less muted shades are permitted for trim paint. Gloss paint is not permitted.
 - a. Care should be taken to avoid the use of an excessive number of materials and colors. Colors and materials must be compatible with each other so as to develop a cohesive appearance for the dwelling appropriate to its architectural character and to the neighborhood. Generally speaking, the fewer number of different colors and materials, the better the result.
 - b. Construction materials must be compatible with the original architectural character of the existing dwelling and neighborhood. When enlarging, extending or remodeling an existing improvement, the materials must be compatible with those of the existing improvement. Materials must harmonize with the natural landscape.

5. **Minimum Dwelling Size.** Any Dwelling constructed on a lot shall have not less than 1,800 square feet of Living Space for dwellings of not more than one (1) story, and 2,000 square feet of Living Space for dwellings of more than one (1) story. The ground floor area of a dwelling of more than one-story shall have not less than 1200 square feet of Living Space, unless otherwise approved. Living Space as used herein means fully enclosed heated and cooled areas of the dwelling and specifically excludes garages and porches.
6. **Height.** A home or attached garage may not exceed a two story height plate unless expressly permitted by the ACC. A detached garage may not exceed a height of twenty-five feet from the grade of the Lot at its lowest point.
7. **Exterior Construction.** The following Design Standards apply to the exterior construction:
 - a. **Material.** The exterior of all dwellings shall be constructed of one hundred percent (100%) brick, stucco, stacked stone, or drivet. Accents may be stone, hardie board, and stucco. Vinyl and other acceptable siding may be used for trim and in the soffits and gables, if approved by the ACC. The roof and exterior of all outbuildings must have shingles and exterior siding of the same type and color as the dwelling, unless otherwise approved.
 - b. **Foundation Elevation.** The top of the foundation shall be a minimum of twelve inches (12") above ground level or grade at its lowest point, or at such higher level as may be necessary to assure positive drainage away from the dwelling and lot.
 - c. **Doors and Windows.**
 - i. Window coverings must be consistent with the character of the neighborhood.
 - ii. Tinted glass is acceptable. Reflective materials, such as, mirrored glass or foil is not acceptable. Security bars are not permitted.
 - d. **Garages.**
 - i. All garage doors must have the prior approval of the ACC before installation.
 - ii. All changes in material or color to the garage door require an application. All garage doors must be painted to match or be compatible with the colors of the home or the garage.
 - iii. Garage doors shall not be removed at any time.
 - iv. Each Dwelling must have at least a two car garage. Each car must have direct access to the driveway.
 - v. Garages may not be converted to living area unless at least a two car garage remains after nay such conversion.
 - vi. When adding a third (or fourth) bay to a garage that is set back less than 40 feet from the street property line, the front plane of the additional garage area must be off-set from the plane of the existing garage to soften the impact of the garage expansion.
 - e. **Roofs.** All roofs shall have a pitch of not less than 8/12, and only architectural shingles shall be allowed unless otherwise approved by the Architectural Control Committee. Metal roofing will be allowed in accent areas, with ACC approval. Roofing colors must harmonize with the natural landscape, community and Development. Roofing must be muted in shades and without color pattern.

- f. Sidewalks. As part of the construction of each dwelling, there shall be included a sidewalk in front of the dwelling and along the entire length of any public right-of-way adjacent to the Lot (*e.g.*, corner lots will require sidewalks along the entire length of the right-of-way for both streets), which shall be constructed as and when required by, to such specifications, have such dimensions, and have such quality of materials, as required for public sidewalks under the ordinances, rules and regulations then in effect in the City of Perry, Georgia. The sidewalk construction required by this paragraph shall be at the expense of the Lot Owner and shall be paid for by the Lot Owner concurrently with the erection of the dwelling.
- g. Skylights. Skylights may not be placed on the front roof of the Dwelling but must be placed in an area that is not visible from any street. Skylights must be of a low profile, preferably flat or slightly curved. Skylight and collector frames, support brackets and any exposed piping must be painted to match or be compatible with the roofing material.
- h. Headwalls and Driveways. No driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such driveway. Any other provision contained herein notwithstanding, any headwall placed on any of said lots shall be constructed of common brick and all driveways shall be constructed and made of concrete. All of said lots shall have a driveway and the same shall be a minimum width of twelve (12) feet and shall run from the paving of the road to the minimum building set-back line for the respective lots.
- i. Existing trees, topography and landscape planning should be taken into consideration and, where possible, driveways should bypass these, leaving them undisturbed.
 - ii. During approved construction, all vehicles in any way connected with such construction shall enter the Lot or Lots under construction only by the driveway as approved in the plans by the Architectural Control Committee. In no event shall any driveways other than those approved by the Architectural Control Committee be constructed or used for temporary access to any Lot. All vehicles shall be parked at the Lot driveway to avoid damage to trees, paving, curbs, gutters and any other improvements on the Lot.
 - iii. Borders made of contrasting materials such as stained or patterned concrete, flagstone, brick or similar materials which are architecturally compatible will be permitted on both sides of the driveway as long as they are not used as permanent parking areas. These types of borders may not exceed 18 inches in width and may not extend beyond the width of the garage. Driveway borders may extend to the street pavement edge.
- i. Walkways.
- i. Walkways may not exceed four feet in width. Additional width may be allowed from areas where a walkway extends into a patio or front door entry way.
 - ii. Side-lot walkways must be located a minimum of one foot from the property line and may encroach into the easements.

- iii. Walkways that encroach into an easement, a platted building line or a street right of way to allow for access to the dwelling and the street will be considered on a case by case basis and must be limited in scope.
 - j. **Mailboxes.** The subdivision is serviced through a collection box unit ("CBU"). If the CBU unit which services the Lot undergoes maintenance or is repaired at any time, each Lot Owner agrees to pay to the ACC or the HOA or Declarant, whoever repairs or maintains the CBU, the quotient of the total cost of the repair or maintenance and the number of Lots serviced by the CBU ("CBU Maintenance Fee"). Said CBU Maintenance Fee shall be paid within thirty days of notice of the CBU Maintenance Fee. If any Lot Owner fails to pay the CBU Maintenance Fee within thirty days of notice, the HOA, ACC, or Declarant, as appropriate, may take all available legal action to recover the fee including but not limited to, placing a lien on the Lot, which lien can include the CBU Maintenance Fee, filing fees, and reasonable attorney's fees. If Declarant, the HOA, or the ACC elect to take legal action without placing a lien on the Lot Owner's property, Declarant, the HOA, or the ACC may recover all filing fees and reasonable attorney's fees in addition to the CBU Maintenance Fee.
 - k. **Screen Porch.** Any screen porch which is a part of any dwelling or accessory structure must be approved by Architectural Control Committee and conform with the design of the Dwelling.
 - l. **Vents.** No plumbing vent or heating vent shall be placed on the front side of any roof or any dwelling or accessory structure, unless approved by the Architectural Control Committee, and any such vent shall be painted the same color as the roof on which it is placed.
8. **Unacceptable Materials** Except as may be allowed by the ACC, unacceptable construction materials include, but are not limited to:
- a. Pneumatic vinyl structures
 - b. Asbestos cement board
 - c. Polyethylene plastic sheets
 - d. Corrugated metal or plastic
 - e. Siding materials with high-gloss finish
 - f. Reflective or "mirrored" glass, including foil or other reflective materials
 - g. Chain-link or hog-wire fencing
 - h. Wire, wire-mesh, or wire-bound wood picket fencing
 - i. Metal fence posts (except two-inch galvanized steel posts or posts in wrought iron fences)
 - j. Asphalt paving
9. **Decks, Paving and Patios.**
- a. Decks, paving and patios may not extend into any easement.
 - b. Decks, paving and patios may not extend beyond any platted building lines.
 - c. Decks above thirty-six inches from the foundation grade are not allowed without prior ACC approval.
10. **Leases** After an Owner owns a Residence for six (6) months, it may be leased by that Owner for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, and any rules and regulations promulgated by the

Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner for any violation or failure to act on the part of the Owner or such tenant under these covenants, and specifically assess all costs associated therewith against the Owner and the Owner's property. All provisions of the Declaration, By-Laws, and any rules and regulations, Design Standards, and all regulations which govern the Owner and which provide for sanctions against Owners shall also apply to all persons who occupy the property (the "Occupants"), even though Occupants are not specifically mentioned.

11. **Resubdivision of Property.** No Lot may be split, divided or subdivided for sale, resale, gift, transfer, or otherwise. Notwithstanding the foregoing, nothing herein shall prevent the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter and further provided that the Owner of the Residence on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot.
12. **Erosion Control.** No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, but are not limited to, physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for herein. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.
13. **Drainage.** On those lots having a drainage ditch or ditches, either natural or man-made, said ditch may not be altered, covered or diverted so as to cause damage to an adjoining lot. Such ditch or ditches may, however, be enclosed with culvert pipe or size, capacity and installation approved by the city or county engineer provided that such enclosure does not increase the volume of water normally flowing in said ditch or ditches, or so concentrate such flow of water as to cause damage to any other property owner or owners within said subdivision. It shall be the Owner's responsibility to maintain all drainage ditch or ditches within the lot boundaries of the Owner.
14. **Landscaping.**
 - a. The front yard and side yards (to the rear corner of the dwelling) of each lot shall be sodded and equipped with an underground, automatic irrigation system, unless otherwise approved. All landscape curbing shall compliment the house exterior color pallet and require ACC approval. All flowerbeds shall have either pinestraw, mulch or rock approved by the ACC. All mulch and rock shall match the color pallet of the home. No white or bright white rocks shall be allowed in any flowerbeds in the front or side yards. Trees in the front yard or side yards, if a corner lot, shall not be removed unless it is diseased or dying and must have written approval from the ACC to do so. Tasteful pruning will be allowed.
 - b. Ornamental yard decorations including, but not limited to, stone statues, bird baths, fountains, gazebos, windmills, bird baths, or other decorative embellishments

which are over 18" tall and are visible from the street are prohibited without the prior approval of the Architectural Control Committee.

- c. *Artificial turf, asphalt, crushed rock, gravel, and artificial ground covers are not allowed as landscaping material. Flagstone and moss rock may be considered if used for pathways, drainage swales or landscaping borders, when used in limited amounts.*
 - d. *Landscape borders, with incorporated rock or stone used to create a defined edge for landscaping beds are acceptable. A border can be made of stone or wood; must be in keeping with the character and design of the home and used for the purposes of surrounding a planting bed. Landscape borders greater than 24 inches in height require application to the ACC. Landscape borders must not compromise security barriers.*
15. **Irrigation Systems** Irrigation systems must:
- a. *Be placed entirely within the lot and not encroach upon any open space reserve (greenbelt) or neighboring lot.*
 - b. *Location of any improvement within an easement or street right-of-way is at the owner's risk and subject to removal.*
 - c. *Municipal utility districts, city, state and federal laws and regulations may apply to the improvement or project. Please consult the appropriate agency.*
16. **Trees.** *Unless a tree is suffering from disease or is dead, no tree having a diameter of three (3) 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 and specifications submitted pursuant to the provisions of Section 7 herein. Guidelines relating to the preservation of trees and other natural resources and wildlife upon the Property may be included in the Design Standards of the ACC.*
17. **Gutters and Downspouts** *Gutters, downspouts and rainwater harvesting tanks must be designed and installed so that water runoff does not adversely affect drainage on adjacent properties. Rain water harvesting tanks may not exceed six feet in height, should be painted to be compatible with the color of the home, screened by solid fencing or substantially screened with native vegetation to screen the view from the street and adjacent properties, as seen from ground level. No more than two rainwater harvesting tanks will be permitted on any lot. These improvements must not halt or materially impede drainage flowing off of a neighboring tract, and must not redirect the flow or significantly increase the amount of water flowing onto a neighboring tract. Enforcement of this requirement is by the affected property owner(s).*
18. **Building Location.** *No building shall be located on any lot nearer to the front line or nearer to the Side Street Line than the minimum building setback line shown on the aforementioned recorded plat of survey. No building or structure or any part thereof (including the dwelling and any detached garage or outbuilding) shall be erected or maintained nearer the side or rear boundary lines of any lot than the minimum setback distance required under the regulations imposed by the governmental authority having jurisdiction. For the purpose of this covenant, eaves, steps, carports, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.*
19. **Temporary Buildings.** *No temporary building, trailer, garage, vehicle or building under construction shall be used, temporarily or permanently, as a residence on any Lot without*

- the prior approval of the ACC. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot.
20. **Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved to the Declarant and as shown on the recorded plat or may be assigned by Declarant to the Association. Said easements shall be maintained in such a manner as to provide for open access and shall not be in any way enclosed.
21. **Barbecue Grills.** Barbecue grills are not permitted in the front or side yards.
22. **Fish Ponds and Fountains.** Any fish ponds and fountains must be in the fenced in yard. Fish ponds and fountains with a water depth of more than 24 inches must comply with all requirements for security barriers.
23. **Accessory Structures.** A detached accessory structure may be placed on a Lot to be used for a playhouse, swimming pool, tennis court, a tool shed, a mailbox, a dog house or a garage, and a garage. Such accessory structure shall not exceed 20 feet in height and shall conform in exterior design and quality to the dwelling on the same Lot.
- a. With the exception of a garage that is attached to a dwelling, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot. Such accessory structures shall also be located with such side and rear setback lines as be required hereby or by applicable zoning law.
 - b. The Architectural Control Committee shall have the right to approve or disapprove the plans and specifications for any accessory Structure to be erected on any Lot, and construction of any necessary structure may not be commenced, until complete final plans and specifications shall have been submitted to and approved by the Architectural Control Committee in accordance with the provisions of these covenants.
 - c. Any accessory structure shall be constructed, concurrently with or subsequent to the construction of the dwelling on the Lot on which such accessory structure is located.
 - d. Accessory Structures must be located in a location that does not result in an unreasonable or disproportionate impact on neighboring properties. The ACC will consider alternate locations when reviewing accessory structures, to minimize impact on adjoining properties or neighboring tracts.
 - e. Outdoor living areas covered by a solid raised roofed structure, typically including rafters must respect the platted building line and building setback lines.
 - f. Outdoor living areas covered by open air pergolas, flat roofing covers or adjustable louvers must respect platted building lines.
 - g. The number of detached buildings, detached structures and outdoor living areas allowed on a lot is dependent upon the lot size and impact on adjacent properties. No more than one structure having square footage of 800 square feet or more will be permitted on any lot.
24. **Awnings.** Awnings must have a simple, plain design and be consistent with the architectural style and scale of the residence. Awnings must be a muted solid shade. Metal awnings are not acceptable. Shade cloth screens can affect the appearance of a dwelling and should be chosen with care. All awnings require review and approval by the ACC.
25. **Signs.** No signs whatsoever (including but not limited to commercial and similar signs) shall, without the Architectural Control Committee's prior written approval of plans and specifications therefore, be installed, altered or maintained on any Lot, or on any portion

of a Structure visible from the exterior thereof except: (i) such signs as may be required by legal proceedings; (ii) a sign indicating the builder of the residence on the Lot; (iii) not more than one "For Sale" sign; provided, however, that in no event shall any such sign be larger than four square feet in area; and (iv) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee.

26. **Sight and Distance at Intersections.** No Fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property line and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
27. **Setbacks.** In approving plans and, specifications for any proposed Structure, the Architectural Control Committee may establish setback requirements for the location of such Structures which are different than those established by the Plat. No structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.
28. **Fences.**
- a. No fence or wall of any kind, including those used for dog kennels or runs, shall be erected, maintained, or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such fences and walls.
 - b. All homes must have as a minimum a 6-foot (in height) wood privacy fence. No chain-link fences shall be allowed.
 - c. No other type fence or wall shall be allowed on any lot (a) in the front yard or any nearer to the street or road right-of-way line than ten (10) feet to the rear of the front of the residence (exclusive of open porches), (b) any nearer to a side street right-of-way line than the minimum building setback line along such side street right-of-way line, and (c) having posts or support members visible from adjacent streets or lots. Fences shall be located no nearer to the front lot line (right-of-way boundary fronting the property) than ten (10) feet in a forward direction from the rear corners of dwelling.
 - d. All fences shall be properly maintained by the Owner.
 - e. Wood fencing must be permitted to weather naturally. Any paint, stain or tinted color sealant requires approval and must be of muted shades. White fences will be considered only when architecturally appropriate. Each side of a wood or composite material fence must be one color.
 - f. Fence construction within an easement is at the risk of the owner. The owner must comply with all utility company requirements, including the maintenance of proper clearances around transformer cabinets. Utility companies should be contacted to mark their lines prior to construction within a utility easement.
 - g. Fencing within drainage, sanitary sewer, water line or pipeline easements must be approved by the easement owner in addition to ACC approval.

- h. Every effort must be made to preserve existing trees by adjusting fence lines to weave among, jog around or abut to trees or stands of trees. No part of a fence may attach to a tree. No tree having a diameter greater than six inches measured two feet above natural grade may be removed for installation of fencing.
29. **Outside Antennae.** No Satellite dishes, outside antennae or other similar structures designed for the reception of television or radio signals shall be placed on any lot, unless same shall be so placed and screened, and kept, so as not to be visible from any street or lot within the subdivision or adjacent to the subdivision. Any fencing or screening for such antennae shall require the prior approval of the Architectural Control Committee.
30. **Garbage and Refuse Disposal.** No lot shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators and other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed at a location on the lot which shall be so placed and screened, and kept, so as not to be visible from any street within the subdivision or adjacent to the subdivision, at any time, except at the times when refuse collections are being made. Any fencing or screening required for said receptacle shall be approved by the Architectural Control Committee.
31. **Clotheslines.** No outside clothesline shall be placed on any Lot.
32. **Outside Storage.** All equipment and woodpiles shall be kept screened by adequate planting and/or fencing so as to conceal them from view of neighboring residences and from the streets. Such materials may only be maintained in the rear yard on a Lot. No exposed above-ground tanks for the storage of fuel, water or any other substance shall be located on any Lot. No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot, nor any such building materials or devices be stored on any Lot for longer than the length of time necessary for the construction of the improvements for which the materials or devices are to be used.
33. **Sewage Disposal.** No individual sewage-disposal system shall be permitted on any lot unless such system is designated, located and constructed in accordance with the requirements, standards and recommendations of the Georgia Department of Public Health. Approval of such systems as installed shall be obtained from such authority.
34. **Commercial and Recreational Vehicles and Trailers.** No motorhomes, campers, camper-trailers, boats, boat trailers, or other recreational vehicles, and trucks exceeding 3/4-ton, shall be kept or stored on any part of any of said lots except (i) within an enclosed garage or (ii) at a location on the lot which shall be so placed and screened, and kept, so as not to be visible from any street or lot within the subdivision or adjacent to the subdivision. All such garages and locations must be behind the fenced in backyard of the Lot. Any fencing or screening for such vehicles shall require the prior approval of the Architectural Control Committee.
35. **Recreational Equipment.** Recreational and playground equipment shall be placed or installed only upon the rear of a Lot behind the fence. Any recreational equipment that can be seen from any road or street in the Development must be approved by the ACC. Basketball goals may only be placed in the fenced-in area of the back yard. No above ground pools shall be allowed. All play equipment (excepting basketball poles) must be

- wood construction, environmentally and aesthetically compatible, and approved by the ACC. All pole mounted basketball goals must be mounted on black poles and have backboards either clear or white.
36. **Livestock and Poultry and Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. However, no animals shall be kept on any lot in such manner as creates a nuisance or disturbance to the other lot owners, or violate any law, ordinance or regulation of the State of Georgia and/or any other county or municipal government or other applicable regulatory or governmental agency having jurisdiction. Dogs which are household pets shall, at all times whenever they are outside a Residence, be on a leash or otherwise confined in a manner acceptable to the Board. Without limiting the foregoing, no pet that has caused damage or injury may be walked in the Development.
 37. **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become an annoyance or nuisance to the community.
 38. **Compost and Gardens.** No compost pile or piles shall be maintained or allowed to accumulate on any Lot. Gardens must be created within a fenced backyard and not exceed 600 square feet.
 39. **Out Door Air Conditioning.** No window air- conditioning units shall be installed.
 40. **Seasonal Lighting.** Except for seasonal Christmas and Halloween decorative lights, all exterior lights must be approved by the ACC. All exterior lights shall be properly maintained by the Owner at all times. Seasonal displays must be limited in scope and not become a nuisance or annoyance to the neighborhood. Decorations and lighting may be installed no earlier than the first Monday in October and must be removed by January 15 of the following year.
 41. **Vehicles.** Adequate off-street parking shall be provided by the Owner of each Lot for the parking of vehicles, and no Owner shall park any vehicle (including, without limitation, boats, campers, motorcycles, scooters and vehicles of any and every description) on the streets of the Development as a matter of course. No vehicle may be left upon any portion of the Development except a garage or driveway, for a period longer than eight (8) hours per week. No vehicles shall be parked on the grassed areas. No vehicles shall be parked within a front yard unless such front yard is part of a driveway, turnaround, garage or carport approved by the ACC.
 42. **Hobbies.** The pursuit of hobbies or other activities, including without limitation, the assembly or disassembly of motor vehicles and other mechanical devices, or other activities which might tend to be disorderly or unsightly shall not be pursued or undertaken in the front yard of any Lot or in any driveway, garage, carport or other place where such activity is visible from the street.
 43. **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

44. **Flags and Flagpole.** All flags and flagpoles to be displayed and erected on any lots, except small flags of less than 3 feet by 3 feet in size which are attached to poles attached to the Dwelling, shall require the approval of the Architectural Control Committee.
45. **Damage to Streets/Curbs.** Any construction of a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot shall be responsible for any damage to any curbing or street resulting from construction on such Lot; repairs of such damage must be made within thirty (30) days after completion of such construction on the Lot to which the damaged curbing or street is contiguous or adjacent.
46. **Security Barrier.** Security barrier fencing must be installed and maintained in compliance with the International Residential Code for all properties with swimming pools, hot tubs, spas or ponds.
47. **Demolition.** Demolition means the complete or substantial removal of a major structure and/or swimming pool. Fencing must be installed around trees in the area of the demolition and access route if tractors or other machinery are to be used in the work. Perimeter fencing must be installed around the site if demolition will not be completed in 48 hours. Security barrier fencing must be installed and maintained in compliance with the International Residential Code for all properties with swimming pools, hot tubs, spas or ponds. Demolition work must be completed within 10 days from commencement. The use of explosives or other means or devices that may cause damage to adjoining properties is prohibited. If the demolition causes dust to substantially impact a neighboring property, water must be used to restrict the dust. The work must be done during normal working hours.
48. **Public Sales.** A Lot may be used no more than twice each calendar year for a "public sale." For this purpose, a "public sale" refers to a garage sale, rummage sale, estate sale, moving sale or similar event wherein personal property is offered for sale to the public. No public sale may commence earlier than 8:00 a.m., extend past 6:00 p.m.
49. **Fires.** Open fires are prohibited except for non-commercial outside food preparation in an appropriate cooking vessel or in a fireplace or an Owner may use an enclosed firepit of not more than 6 feet in diameter.

ARTICLE VII EASEMENTS, ZONING, AND OTHER RESTRICTIONS

1. **Easement to Declarant** Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property, any part of the Common Property, or any Lot (except any Residence located upon such Lot) for any purpose which Declarant deems necessary, including, by way of example and not limitation, the following:
- a. the erection, installation, construction and maintenance of wires, lines, conduits and poles, and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television, cables and other utilities and similar facilities;
 - b. the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;

- c. slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and
 - d. the planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.
2. **Reserved to Declarant** No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.
 3. **Easement Area.** The words "Easement Area" as used herein, shall mean those areas on any Lot or any other portion of the Property with respect to which easements (of any nature) are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.
 4. **Entry.** The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or other wrongful act solely by reason of such entry and the carrying out of such purposes; provided, however, the same are done in accordance with the provisions of this Article. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area.
 5. **Transfer to Association.** When all lots in the Development, including all future properties developed by Declarant in the Hawk's Nest, shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents, the Association shall have Declarant's rights set forth in this Article.
 6. **Zoning and Private Restrictions.** None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

ARTICLE VIII MAINTENANCE AND GENERAL COVENANT ENFORCEMENT

1. **Duty of Maintenance.** Each Owner and Lessee of an Owner shall keep and maintain each Lot and Structure owned directly or indirectly by him, as well as all landscaping located thereon, in good condition and repair, in a neat and attractive condition, and in accordance with the Development-Wide Standard, including but not limited to:
 - a. Prompt removal of all litter, trash, refuse, non-permitted vehicles and wastes;
 - b. Lawn mowing;
 - c. Tree and shrub pruning;
 - d. Keeping lawn and garden areas alive, free of weeds, and attractive;
 - e. Watering;
 - f. Keeping parking areas, driveways, and roads in good repair;
 - g. Complying with all government health and police requirements;

- h. Repainting of improvements;
 - i. Repair of exterior damages to improvements.
2. **Right of Enforcement.** This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant, so long as it is an Owner, (ii) the Association, or (iii) each Owner, his or her legal representatives, heirs, successors and assigns.
 3. **Right of Abatement.** Except where different notice provisions are provided in this Declaration, in the event of a violation or breach of any Restriction contained in this Declaration, including the Duty of Maintenance in this Article, the Association shall give written notice by certified mail to the Owner setting forth, in reasonable detail, the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within ten (10) days after the mailing of said notice, then the Association shall have the Right of Abatement.
 - a. The Right of Abatement as used in this Declaration means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry, providing such entry and such actions are carried out in accordance with this Article. The costs of such entry and action, including the costs of collection, court costs, and reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by law, or eighteen (18%) percent per annum, whichever is greater, shall be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of this Article. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage deed to secure debt, or other instrument, excepting only: (i) such liens for taxes or other public charges as are by applicable law made superior; (ii) the liens created by Section 4.1 hereof, and (iii) all deeds to secure debt given to secure a loan, the proceeds of which are used (1) to purchase a Lot or Lots, together with any and all Structures which may from time to time be placed or located thereon, and (2) to finance the construction, repair or alteration of Structures.
 2. **Specific Performance.** Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns by reason of a violation of or failure to perform any of the obligations provided by this Declaration. Accordingly, any beneficiary hereof shall be entitled to relief by way of injunction or decree of specific performance, as well as any other relief available at law or in equity to enforce the provisions hereof. The prevailing party in any equitable action taken as a result of, arising

- out of, or pertaining to this Declaration shall be entitled to all costs associated with the equitable action including, but not limited to, reasonable attorney's fees and court costs.
3. **WAIVER.** EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE IMPOSITION OF A LIEN ON THE OWNER'S PROPERTY FOR ANY UNPAID ASSESSMENTS, MAINTENANCE FEES, FEES INCURRED IN ABATEMENT, FINES, AND THE INTEREST AND LATE FEES ASSESSED ON SUCH AMOUNTS DUE, AND THE COST OF ATTORNEYS' FEES AND COURT COSTS ASSOCIATED WITH THE COLLECTION AND FILING OF THE LIEN.
 4. **No Waiver.** The failure of Declarant, the Association or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.
 5. **Casualty Damage Repair.** Casualty Damage Casualty damage means damage or destruction (beyond normal wear and tear or deterioration) caused by fire, flood, and hurricane or other natural or man-made cause. Minor Damage Casualty damage that affects only furniture, equipment or wall, floor or window coverings may be repaired without application, approval or inspection. Damage that affects the structure of the Dwelling and/or costs more than thirty percent (30%) of the value of the Dwelling to repair is major casualty damage. All Owners must submit plans to make Major Casualty Repairs to any structures on the Lot to the ACC for approval. Emergency repairs required to temporarily prevent property loss or damage or bodily injury may be made without application, review or prior inspection. Permanent Repairs Permanent repairs are considered remodeling work and must comply with these Standards like other additions, alterations or remodeling. Casualty damage must be removed or restored as soon as feasible. Removal, repair or restoration must begin within 30 days and be completed within 180 days following the date of the casualty damage. Extensions of the time permitted for removal or restoration may be granted by the ACC and/or Association upon a determination that timely completion of the cleanup or restoration is delayed due to legal investigation, a delay in obtaining insurance proceeds, or other matters beyond the control of the owner.
 6. **Violation of Covenants.** For all violations of the Covenants that do not involve non-payment of assessments, the following policy shall control:
 - a. Persons Authorized to Complain. Complaints regarding the alleged violations may be reported by an Owner, the ACC, or the Board.
 - b. Complaints. Complaints shall be in writing and submitted to the Board of Directors. The complainant shall have observed the alleged violation and shall identify the complainant ("Complainant"), the alleged violator ("Violator"), if known, and set forth a statement describing the alleged violation, referencing specific provisions which are alleged to have been violated, when the violation was observed and any other pertinent information. Non-written complaints or

written complaints failing to include any information required by this provision may not be investigated or prosecuted at the discretion of the Board.

- c. Investigation. Upon receipt of a complaint by the Association, if additional information is needed, the complaint may be returned to the Complainant or may be investigated by a Board designated individual or committee. The Board shall have sole discretion in appointing an individual or committee to investigate the matter.
- d. Initial Warning Letter. If a violation is found to exist, a warning letter shall be sent to the Violator either through First Class U.S Mail or electronic mail with read receipt. The letter will explain the nature of the violation. The Violator shall have 10 days from the date of the letter to come into compliance.
- e. Continued Violation after Initial Warning Letter. If the alleged Violator does not come into compliance within 10 days of the first warning letter; this will be considered a second violation for which a fine may be imposed following notice and opportunity for a hearing. A second and subsequent letter shall then be sent to the alleged Violator, providing notice and an opportunity for a hearing, and explaining if a violation is found to exist a fine may be imposed pursuant to this policy. The letter(s) shall further state that the alleged Violator will have 10 days from the date of the letter to come into compliance and is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing within 10 days of the date of the violation letter.
- f. Notice of Hearing. If a hearing is requested by the alleged Violator, the Board, committee or other person conducting such hearing as may be determined in the sole discretion of the Board, may serve a written notice of the hearing to the Complainant and alleged Violator at least 10 days prior to the hearing date.
- g. Hearing. At the beginning of each hearing, the presiding officer, shall introduce the case by describing the alleged violation and the procedure to be followed during the hearing. Each party or designated representative, may, but is not required to, make an opening statement, present evidence and testimony, present witnesses and make a closing statement. The presiding officer may also impose such rules of conduct as may be appropriate under the given circumstances. Neither the Complainant nor the alleged Violator are required to be in attendance at the hearing. Unless otherwise determined by the Board, all hearings shall be open to attendance by all Owners. After all testimony and other evidence has been presented at a hearing, the Board shall, within a reasonable time, not to exceed 15 days, render its written findings and decision, and impose a fine, if applicable. A decision, after either a finding for or against the Owner, shall be by a majority of Board members present at the hearing. Failure to strictly follow the hearing procedures set forth above shall not constitute grounds for appeal of the hearing committee's decision absent a showing of denial of due process.
- h. Failure to timely Request Hearing. If the alleged Violator fails to request a hearing within 10 days of any letter, or fails to appear at any hearing, the Board may make a decision with respect to the alleged violation based on the complaint, results of the investigation, and any other available information without the necessity of holding a formal hearing. If a violation is found to exist, the alleged Violator may be assessed a fine pursuant to these policies and procedures.

- i. Notification of Decision. The decision of the Board, committee or other person, shall be in writing and provided to the Violator and Complainant within 15 days of the hearing, or if no hearing is requested, within 7 days of the final decision.
- j. Fine Schedule. The following fine schedule has been adopted for all recurring covenant violations:
 - i. First Violation: Warning Letter
 - ii. Second Violation: \$25 per day that violation continues (of same covenant or rule)
 - iii. Second and subsequent violations may be turned over to the Association's attorney to take appropriate legal action.
 - iv. Any Owner or Resident committing three or more violations in a six month period (whether such violations are of the same covenant/rule or different Covenants/Rules) may be immediately turned over to the Association's attorney for appropriate legal action.
 - v. Owners will be responsible for all attorney's fees, legal costs, and expenses of litigation for any second or more violations.
 - vi. At the Second Violation or any Subsequent violations, the Association may place a lien on the violator's property to include the penalty, fines, Legal costs, Attorney's fees, Expenses of Litigation, and any costs incurred by the Association to remedy the violation.
- k. Waiver of Fines. The Board may waive all, or any portion, of the fines if, in its sole discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the Violator coming into and staying within compliance the Articles, Declaration, Bylaws or Rules.
- l. Amendment. This Fine schedule may be amended by the Association with the vote of twenty percent (20%) of all Class A Members. Said Amended must be recorded in the Deed Records of Houston County, Georgia.

ARTICLE IX DURATION AND AMENDMENT

1. **Duration**. This Declaration and the covenants, restrictions and provisions set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, Association, ACC, and every owner of any part of The Property and Development, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded, and continuing through and including January 31, 2037 (the "Initial Term"), after which time said covenants shall be automatically extended for successive periods (each an "Extended Term") in accordance with the provisions of *O.C.G.A. § 44-5-60(d)(1)* in effective at the end of the Initial Term, unless then or thereafter terminated by the persons then owning the Lots in accordance with the provisions of *O.C.G.A. § 44-5-60(d)(2)* then in effect. In the event that said code provisions have been revoked or rescinded by subsequent act of the Legislature, then the provisions in effect as of the date of recording of this Declaration shall apply for such purposes of extending or terminating the covenants set forth herein.

2. **Amendments by Board of Directors.** The Board of Directors may amend this Declaration if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith.
3. **Amendments by Association.** Amendments to this Declaration, other than those authorized by Section 2 or 4 herein, shall be proposed and adopted only in the following manner:
 - a. Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.
 - b. At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by a Member or Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association, provided however, (i) that any amendment which materially and adversely affect the security title and interest of any mortgagee must be approved by such mortgagee, and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved in writing by Declarant.
 - c. The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment. If the Declarant does not then have the right to approve such amendment, such amendment may, in the alternative, be evidenced by the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.
4. **Amendment by Owners.** This Declaration may be amended during the Initial Term (as defined in Section 1 hereof) by an instrument adopting such amendment signed by the record title owners of at least ninety percent (90%) of all of the lots comprising the Properties, and thereafter by an instrument signed by the record title owners of at least seventy-five percent (75%) of all of the lots comprising the Properties.

ARTICLE X MISCELLANEOUS

1. **Agreements.** Subject to the prior approval of Declarant (so long as Declarant owns any property in the Development) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property.
2. **Variances.** Notwithstanding anything to the contrary contained herein, the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-laws and any rule, regulation or use restriction promulgated

pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development of the Property.

3. **Indemnification.** To the fullest extent allowed by applicable Georgia law, the Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled.
4. **No Reverter.** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.
5. **Severability.** A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof and the offending provision shall be severed from this Declaration.
6. **Headings.** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the covenants of this Declaration.
7. **Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and the neuter gender, as well as the singular, the plural and vice versa where the context so requires.
8. **Notices.** All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient if deposited in the U.S. Mail or sent via electronic mail with return receipt received. The notice shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail or on the date that the e-mail receipt is received, whichever is earlier. Declarant and the Association shall also have the right to hand deliver such notice or notices by hand to the Owners at the street address of the Owner's Lot.
9. **Insurance.** At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the

type of recreational activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insureds be given thirty (30) days prior written notice of any cancellation of such policies.

- a. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair and reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.
 - b. Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Members of the Association entitled to vote thereon, and the Declarant (so long as the Declarant has the right to appoint and remove Officers and Directors of the Association) otherwise agree. If, for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.
 - c. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to completely pay the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in a like manner at any time during or following the completion of any repair or reconstruction. If the funds available from the insurance proceeds exceed the costs of repair or reconstruction, or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.
 - d. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.
 - e. The deductible for any casualty insurance policy carried by the Association may, in the event of damage or destruction, be paid by the Association. Provided, however, nothing herein shall restrict or limit the right of the Association to recover all or part of any damages it may suffer, including the deductible herein, from such person(s) or entities as may be responsible.
10. **Notice of Sale.** If an Owner sells his or her Residence, the Owner shall give to the Board, in writing, the name of the purchaser of the Residence and such other information as the Board may reasonably require within ten (10) days after the sale is effectuated.

11. **Security.** The Association shall not have any responsibility to provide security of any kind for Owners.

**ARTICLE XI
MORTGAGEE PROVISIONS**

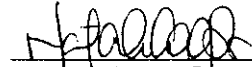
- 1. **General** The following provision is for the benefit of holders of first or second mortgages or deeds to secure debt (sometimes collectively referred to herein as "mortgages") on Residences in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.
- 2. **Notices of Action.** An institutional holder, insurer, or guarantor of a first or second mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number and name of the Owner of such Residence), hereinafter known as an "eligible holder", will be entitled to a statement of assessments and Declaration violation amounts currently owed, including late fees, collections costs, interest, and attorney's fees.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

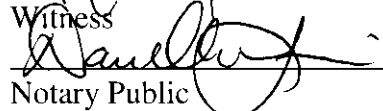
Ski Development, LLC



 By: Jeff Liszewski, Sole Member



 Witness



 Notary Public

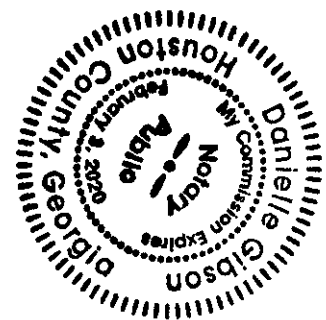


EXHIBIT "A"**Description of Property**

All those tracts or parcels of land situate, lying and being in Land Lot 182 of the Tenth Land District of Houston County, Georgia, known and designated as Portions of Phases 1, 4, & 5 of The Hawk's Nest Subdivision, which is comprised of, more specifically, Lots 54-80 (both inclusive), and Lots 153-158 (both inclusive), of a Subdivision known as THE HAWK'S NEST SUBDIVISION, Phase Numbers 1, 4, and 5, according to a map or plat of survey of said subdivision titled "Portions of Phases 1, 4, & 5, Lots 54-80 & Lots 153-158 of The Hawk's Nest Subdivision" prepared by Ocmulgee, Inc., certified by Marty A. McLeod, Georgia Registered Land Surveyor No. 2991, dated December 5, 2016, a copy of which is of record in Map Book 79, Page 18, Houston Superior Court, which plat is by this reference thereto incorporated herein and made a part hereof for all purposes.