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Clerk of Superior Court Cobb Cty. Ga.

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DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS  
FOR RESERVE AT MILLERS CREEK

Cobb County, Georgia

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR RESERVE AT MILLERS CREEK

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DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR RESERVE AT MILLERS CREEK

This Declaration is made as of this 20th day of Sept., 2001 by Pleasant Hill, LLC, a Georgia limited liability company, ( the "Declarant").

BACKGROUND STATEMENT

That certain real property located in Cobb County, Georgia, which is more particularly described on Exhibit "A" attached hereto (together with such additional real property as may be subjected to the provisions of this Declaration pursuant to Section 10, "Property") is hereby subjected to this Declaration.

Declarant intends to develop on the Property a development to be known as Reserve at Millers Creek. Declarant imposes by this Declaration mutually beneficial restrictions under a plan of improvement for the benefit of all owners of residential property within Reserve at Millers Creek, the planned unit development made subject to this Declaration by the recording of this Declaration and amendments thereto. Declarant desires to provide for the development, administration, maintenance and enjoyment of Reserve at Millers Creek.

Declarant has caused the Reserve at Millers Creek HOA, Inc. to be formed as a nonprofit corporation for the welfare of the owners and occupants of residences within the Development.

The Declarant declares that the Property shall be held and conveyed subject to this Declaration for the purpose of enhancing and protecting the value, benefits and attractiveness of the Property. The covenants, restrictions and easements 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.

1. DEFINITIONS. The following words, when used herein shall have the following meanings:

1.1 Association. "Association" means Reserve at Millers Creek HOA, INC., a non-profit, non stock, membership corporation organized under the Georgia Nonprofit Corporation Code, its successors and assigns.

1.2 Board. "Board" means the Board of Directors of the Association.

1.3' By-Laws. "By-Laws" means the By-Laws of the Association.

1.4 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.

1.5 Common Property. "Common Property" means all real property owned by the Association for the common use and enjoyment of the Owners and Occupants of Residences and, to the extent set forth herein, the general public. The Common Property is described on "Exhibit B" attached hereto.

1.6 Declarant. "Declarant" means the party identified above as the Declarant or its successor. A person or entity shall become a successor to the Declarant only if (a) the then present Declarant conveys to such person or entity for the purpose of development or sale all or a portion of the remaining undeveloped or unsold portions of the Property, or other real property which is intended to become part of the Property and (b) in the instrument of conveyance to any such person or entity, the then present Declarant designates such person or entity as the "Declarant" hereunder. Upon such conveyance and designation, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease.

1.7 Development-Wide Standard. "Development-Wide Standard" shall mean the standard of construction, conduct, maintenance or other activity originally installed, specified or approved by the Declarant and thereafter generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to the Declaration and By-Laws.

1.8 Lot. "Lot" means any parcel of land shown upon a subdivision plat or concept plan approved by Cobb County, Georgia, covering any portion of the Property, provided that no portion of the Common Property shall ever be a Lot, except as provided in Section 2.5.

1.9 Membership. "Membership" means all Members of the Association.

1.10 Member. "Member" means any member of the Association.

1.11 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 Residence.

1.12 Owner. "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.13 Residence. "Residence" shall mean a structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A Lot and the structure or



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structures placed thereon shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other than the builder thereof. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a certificate of occupancy for the Residence.

1.14 Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.15 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 of limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, deck, fence, curbing, paving, wall, sign, sign board, 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 surface waters from, upon or across any Lot, or which affects or alters the 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, whether or not clause (b) of this paragraph applies to such change.

## 2. COMMON PROPERTY

### 2.1 Conveyance of Common Property.

2.1.1 The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section 2.1, real and personal property for the common use and enjoyment of the Owners of Residences and, to the extent set forth in this Declaration, the general public. The Association shall accept from the Declarant all such conveyances of Common Property.

2.1.2 The Declarant plans to convey property to the Association for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the property Declarant so plans to convey to the Association at any time prior to conveyance of such property to the Association.

2.1.3 In addition to the property described in Section 2.1.2, the Declarant may convey to the Association in accordance with this Section 2.1 any other property the Declarant may determine to be proper for the completion of the Development.

2.1.4 Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as "Common Property" or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.



2.2 Right of Enjoyment. Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which 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 Declarant may permit persons who are not Owners of Residences 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 2.2 is subject to suspension by the Association as provided in clause (f) of Section 2.3 and in Section 3.5.

2.3 Rights of The Association. The rights and privileges conferred in Section 2.2 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 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; provided, however, that, during the period when the Declarant has the right to appoint members of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by Declarant and 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; (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, pursuant to Section 3.5, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.2; (g) 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 or municipal entity having jurisdiction therefor.

2.4 Conveyance of Common Property by Declarant to Association. The Declarant may convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this

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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.

2.5 Types of Common Property. At the time of the conveyance of any real property by the Declarant to the Association, the Declarant shall designate in the deed of conveyance or easement that such 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 of Members of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

2.6 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, his right to use and enjoy the Common Property.

2.7 Maintenance. The Association shall maintain and keep in good repair the Common Property and the areas located at or near the entrances to the Development (such entrance areas being "Entrance Areas"). This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property and the Entrance Areas. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights of way which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority. 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 the perimeter boundaries of the Development (other than the Entrance Areas) and to maintain and provide services for 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 the costs regarding such property where the Board has determined that this would benefit Owners.

### 3. RESERVE AT MILLERS CREEK HOA, INC.

3.1 Purposes, Powers and Duties of The Association. The Association shall be formed as a non-profit civic organization for the sole purpose of serving the common good and general welfare of the Owners and Occupants. 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 Owners and Occupants. To the extent, and only to the extent, necessary to carry out such purpose, 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.

3.2 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. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.3.



### 3.3 Voting Rights.

3.3.1 Each Owner of a Lot, with the exception of Declarant, 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.

3.3.2 The Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.8.

3.3.3 The Development will be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Cobb County in accordance with Section 10. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added. Nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless Declarant subjects such phase to this Declaration with the appropriate writing.

3.4 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.

3.5 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 Section 8.2 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 herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14 or 8.2; (b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Section 4; 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, except that in the case of a violation described in clause (c) above, the suspension may be for a period not to exceed 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.

3.6 Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

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3.7 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.

3.8 Control by Declarant.

3.8.1 The Class B membership (Declarant's weighted vote) ceases and converts to Class A membership upon the first of the following events to occur:

- (a) the expiration of five (5) years from the date of recording of the Declaration.
- (b) the date as of which three-fourths (3/4) of the lots which may be developed on the Property and the Additional Property shall have been conveyed, by either the Declarant or by a builder who purchased the lot from Developer for the purpose of erecting a dwelling thereon, to an individual owner or owners for residential occupancy; or
- (c) the surrender by the Developer of the authority to appoint and remove members of the Board of the Association by an express amendment to the Declaration executed and recorded by the Developer; provided, however, that so long as any Mortgagee of Developer holds a security interest in any portion of the Property, as security for a Development Loan to Developer, the Class B membership shall not terminate without the prior written consent of such Mortgagee.

3.8.2 Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board which shall undertake the responsibilities of the Board and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

4. ASSESSMENTS

4.1' Covenant for Assessments and Creation of Lien and Personal Obligation. Each



Owner of a Lot 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, hereby covenants and agrees as follows: (a) to pay to 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) 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 in Section 4.9 and costs of collection including reasonable attorneys' fees; (d) 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 in any manner arise 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 are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used to purchase a Lot or Lots and or to finance the construction, repair or alteration of Structures; (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot from liability for any assessment thereafter assessed; (f) that all annual, special and specific assessments (together with interest thereon as provided in Section 4.9 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 clause (c) above) a personal obligation which will survive any sale or transfer of the Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.2 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the Development, including, but not limited to, 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, 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.

4.3 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 to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.4 Annual Assessment.

4.4.1 Beginning on the Commencement Date and continuing thereafter until January

1 of the year immediately following the Commencement Date, each Lot shall be subject to an annual assessment of \$75.00 per Lot. 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. For so long as Declarant has the right to appoint and remove Directors and Officers of the Association, the annual assessment shall not be reduced below \$75.00 without the express written consent of Declarant.

4.4.2 Commencing with the first Assessment Year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year not more than five percent (5%) above the annual assessment for the previous Assessment Year without a vote of the Membership.

4.4.3 Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than five percent (5%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote cast by 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 By-Laws.

4.5 Special Assessments. In addition to the annual assessments authorized by this section, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. The Board may levy in any Assessment Year without the approval of the members special assessments which in the aggregate do not exceed the annual assessment then in effect. Special assessments exceeding such amount shall require the approval of two thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the By-Laws.

4.6 Specific Assessments. The Board shall have the power to specifically assess pursuant to this section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein: (a) expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all of the Residences which are benefitted according to the benefit received; (b) expenses incurred by the Association pursuant to Section 6.14; and (c) reasonable fines not to exceed fifty (\$50.00) dollars per day per violation to cover costs incurred in bringing any Owner's Lot into compliance



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with the terms of this Declaration, the By Laws, and Rules and Regulations of the Community or costs incurred as a consequence of the conduct of the Owner or occupants of the Residence, their agents, contractors, employees, licensees, invitees, or guests; provided the ACC shall give the Owner prior written notice and an opportunity for a hearing in accordance with this Declaration and the By Laws, before levying any Specific Assessment under this sub Section (C).

4.7 Individual Assessments. Any expenses occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of the Owner of any Lot shall be specially assessed against the Lot or Lots, the conduct of the occupants (or their agents) of which occasioned such expenses. The individual assessments provided for in this Section 4.7 shall be levied by the Board and the amount and due date of such assessment so levied by the Board shall be as specified by the Board.

4.8 Assessment Procedure. The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Section 4, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that portion of such costs will be covered by Special Assessment. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of this Section 4.

4.9 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots.

4.10 Contribution By Declarant. Declarant shall not be liable for the payment of any assessments; provided, however, Declarant may, at Declarant's option, advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of annual, special and specific assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

4.11 Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum or at such lawful rate

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as the Board may from time to time establish. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an owner shall fail to pay fully any portion of any assessment on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

4.12 Certificate of Payment. Upon written request of 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, interest and costs, if any) have been paid with respect to any Lot owned by such 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. 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.

4.13 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant has the right to appoint Officers and Directors of the Association.

## 5. ARCHITECTURAL CONTROL

### 5.1 Architectural Control Committee - Creation and Composition

5.1.1 An Architectural Control Committee ("ACC") shall be established consisting of not less than three (3) nor more than five (5) individuals; provided, however, that the ACC shall always have an uneven number of members, and no member is required to be an Owner. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the Residences for all of the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association.

5.1.2 Each initial member of the ACC shall be appointed for a term expiring on June 1, 2003. Thereafter each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall be filled by the Declarant (or the Board if the Board then has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or



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without cause by the Declarant (or the Board if the Board then has the right to appoint members of the ACC).

5.2 Purpose Powers and Duties of the ACC. The purpose of the ACC is to assure that any proposed 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 (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 every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.3 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number and/or the Owners such other officers and subcommittees members as they shall from time to time determine necessary. 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.

5.4 Operations of the ACC.

5.4.1 Meetings. The ACC shall hold regular meetings at least once every three (3) months or more often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member of the ACC at his residence or at his usual place of business 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 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. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for 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. 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. The ACC shall

maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association. 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 the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

#### 5.4.2 Activities

5.4.2.1 The ACC shall adopt and promulgate the Design Standards described in Section 5.5 and shall, as required, make findings, determinations, rulings and orders with respect to the conformity with the Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this 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.

5.4.2.2 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 resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this section. 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 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 event 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.

5.5 Design Standards. The ACC shall from time to time adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of: (i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration; (ii) governing the procedure for such submission of plans and specifications; (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and (iv) assuring the conformity and harmony of external design and general quality of Development. The ACC shall make a copy of its current written Design Standards, if any shall have been reduced to writing, readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval. Initially, the Design Standards shall be defined as the construction, finish and color of structures that is the same as the construction, finish and color of



structures installed, specified or approved by Declarant.

5.6 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 there for 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 in the Design Standards, including, without being limited to: (a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures; (b) a foundation plan; (c) a floor plan; (d) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all back-filling and landscaping are completed; (e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and (f) plans for landscaping and grading.

5.7 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 the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed 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 any 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.

5.8 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following: (a) the failure to include information in such plans and specifications as may have been 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 installations, 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 Development as set forth in the Design Standards or the Development-Wide Standard, or (ii) as to location to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specification 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, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

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5.9 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 ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed rejection of such plans and specifications.

5.10 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 and 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, provided such inspection is carried out in accordance with the terms of this section.

5.11 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 Section 5, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Section 5 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 take appropriate measures to correct the violation; 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 Section 8.2.

5.12 Certification of Compliance.

5.12.1 Upon completion of the installation, construction or alteration of any Structure 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 complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

5.12.2 Any Certificate of Compliance issued in accordance with the provisions of this section shall be prima facie evidence of the facts therein stated. 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 Section 5, 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



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construction, workmanship, engineering, materials or equipment. 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.

5.13 Fees. 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 Section 5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.14 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.15 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials. By approving such plans and specifications, neither the ACC, nor 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 any 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 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, waives, remises, quitclaims, and covenants not to sue for all claims, demands, and causes 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.

## 6. GENERAL COVENANTS AND RESTRICTIONS

6.1 General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XII, Section 4, hereof regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Total Association Vote.

6.2. Residential Use. All Lots shall be used for residential purposes exclusively. No

business or business activity shall be carried on, in or upon any Lot at any time except with the written approval of the Board. Leasing of a Lot shall not be considered a business or business activity. However, the Board may permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or Bylaws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities.

6.3. Waterfront Land. On any Common Area or on Lots adjacent to a lake or creek or other water bodies or courses, no refuse of any kind shall be placed on or disposed of into the adjacent waters which are to be kept clean and free of pollution.

6.4. Signs. No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the ACC. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. "For Sale" and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

6.5. Vehicles. The term "vehicles," as used herein, shall include, without limitation, any motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles having no more than 2 axles and not requiring for its operation a class C drivers license. All vehicles shall be parked by occupants within the parking areas serving the Lot. Where the Lot contains a garage, "parking areas" shall refer to the number of garage parking spaces. All single-family detached homes contain a garage. No carports shall be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. Any towed vehicle, boat, recreational vehicle, motor home, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than twenty-four (24) hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No commercial vehicle or like equipment shall be permitted on any Lot for more than twenty-four (24) hours in a 3 month period without prior written approval of the ACC. Such limitation shall not apply to any such vehicle servicing a Lot or Common Property during the normal course of business. Notwithstanding the foregoing, any such vehicles or equipment may be stored



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on a Lot, provided such vehicle or equipment is kept in an enclosed space, is concealed from view by neighboring residences and streets, and the ACC grants prior written approval of any such storage conditions and locations. For purposes of this declaration the term a commercial vehicle as used herein shall include any vehicle having three (3) or more axles and requiring for its operation that the driver have a class C drivers license as defined by the State of Georgia.

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

6.6. Parking. Adequate off-street parking is provided with each Lot; therefore no outside dwelling parking is allowed. Garage doors shall be kept closed, except for ingress and egress of the dwelling. Garages shall not be used for any storage purposes which cause any vehicles to be parked on driveway on a regular basis. Any vehicle parking on the street on a routine basis or for extended time periods (over 24 hours) will be towed at owner's expense. The decision on the ACC will be final as to any questions involving permissible or non-permissible parking. All parking shall be subject to such rules and regulations as the ACC may adopt.

6.7. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least twelve (12) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of 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 and specifically assess all costs associated therewith against the Owner and the Owner's property.

6.8. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

6.9. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No pets shall be kept, bred or maintained for any commercial purpose.

6.10. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive

activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

6.11. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

6.12. Antennas. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the ACC, which consent shall not be withheld to unreasonably delay or prevent installation. Standard television antennas, direct broadcast satellite services antenna (DBS) one meter in diameter or less, multi-channel, multi-point distribution service antenna (MMDS) one meter in diameter or less, upon prior approval of the ACC, may be installed on any Lot subject to the following requirements: (a) antenna placement on a roof shall not be visible from the street, provided such placement does not preclude reception of an acceptable quality signal; (b) antennas installed in a yard must be adequately screened from view; and (c) each Lot owner shall be solely responsible for installing and maintaining their antenna, notwithstanding the foregoing.

6.13. Tree Removal. No trees that are more than three (3) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the ACC. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the ACC.

6.14. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow, and a ten (10) foot easement over the rear and side of each Lot for purpose of performing the foregoing. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

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



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6.16. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community.

6.17. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the ACC. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replotting shall not be in violation of the applicable subdivision and zoning regulations.

6.18. Guns, Hunting and Fishing. The use of firearms in the Community is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and small firearms of all types. No hunting or fishing within the Community is permitted.

6.19. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the ACC. The ACC may issue guidelines detailing acceptable fence styles or specifications which may be amended from time to time.

6.20. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

6.21. Air-Conditioning Units. Except as may be permitted by the ACC, no window air conditioning units may be installed.

6.22. Lighting. Except as may be permitted by the ACC, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one (1) decorative post light, (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights at Christmas; or (e) front house illumination of model homes.

6.23. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the ACC.

6.24. Energy Conservation Equipment No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ACC.

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6.25. Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without the prior written consent of the ACC and in no event shall any above-ground swimming pool be permitted.

6.26. Gardens, Play Equipment, Recreational Equipment and Pools No vegetable garden, hammock, statuary, play or recreational equipment (including, without limitation, basketball goals), wading pools erected or located on any Lot may be located only between the rear dwelling line and the rear lot line, with the approval of the ACC.

6.27. Mailboxes. All mailboxes shall be maintained in good condition and in the style and color originally installed, specified or approved by Declarant. Replacement or rebuilt mailboxes shall be in the same style and color as the original except as deviations from the original may be approved by the ACC.

6.28. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the ACC.

6.29. Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

6.30. Exterior Security Devices. No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

6.31. Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the ACC.

6.32. Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each LOT on the basis of the size and facilities of the Lot and its fair use of the Common Area.

6.33. Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of Lot, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

6.34. Owners' Acknowledgment. All Owners and occupants of Lots are given notice that use of their Lots is limited by the Lot Restriction and Rules as they may be amended, expanded,



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and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected and that the Community Wide Standards may change from time to time.

6.35. Windows and Doors. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or other purposes. All shades, drapery linings, or other window treatments visible from the exterior of the dwelling on any window or door shall be white or off-white.

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

6.37. Burning of Trash. No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any kind shall be permitted on any Lot.

6.38. Trash Containers. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any portion of the Property. Garbage, trash and other refuse shall be placed in covered containers.

6.39. Above-ground cables, etc. Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, television cable or similar transmission line shall be installed or maintained above the surface of the ground.

6.40. Out Buildings. No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, shed or other buildings shall be erected, used or maintained on any Lot at any time without the prior written consent of the ACC.

6.41. Use of Common Areas and Facilities. The use and enjoyment of the common areas and facilities by the Lot Owners, their families, tenants, visitors, guests, servants and agents, shall be subject to such reasonable rules and regulations as may be made and amended from time to time by the Board of Directors of the Association. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all Owners in the Community and is necessary for the protection of said Owners.

## 7. EASEMENTS, ZONING AND OTHER RESTRICTIONS

### 7.1 Easements.

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7.1.1 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 owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following: (i) 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; (ii) 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; (iii) 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 (iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.

7.1.2 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.

7.2 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 are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.

7.3 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 wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this section. 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 pursuant to the provisions of Section 7.1.

7.4 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 Declaration, the most restrictive provision shall govern and control.

## 8. ENFORCEMENT

8.1 Right of Enforcement. This Declaration and the Restrictions shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal representatives, heirs, successors and assigns.

8.2 Right of Abatement.



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8.2.1 Except where different notice provisions are provided in Sections 5.11 and 6.14, in the event of a violation or breach of any Restriction 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 written notice, then the Association shall have the Right of Abatement.

8.2.2 The "Right of Abatement" 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 and such actions, provided such entry and such actions are carried out in accordance with the provisions of this section, the right to impose reasonable monetary fines as provided hereinbefore, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by Law or 18% per annum to be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.4. 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 and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) or to finance the construction, repair or alteration of Structures.

8.3 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. It may be impossible, however, 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 specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

#### 8.4 Collection of Assessments and Enforcement of Lien.

8.4.1 If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

8.4.2 As an additional remedy, if any assessment, interest, cost or other charge is

not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: to sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Courthouse in Cobb County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriffs advertisements for Cobb County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney-in-fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to such Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

8.4.3 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 EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

8.5 No Waiver. The failure of the 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.

9. DURATION AND AMENDMENT



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9.1 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Cobb County, Georgia, after which time this Declaration and the Restrictions may be renewed for successive periods of ten (10) years, upon approval of all Members, provided, however, that after the end of the such twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the office of the Clerk of the Superior Court of Cobb County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of those Class A 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.

9.2 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any Directors and Officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the office of the Clerk of the Superior Court of Cobb County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owners right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a member holding two thirds (2/3) of the total votes in the association, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.2 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.2 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 9.2, shall be proposed and adopted in the following manner:

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9.3.1 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.

9.3.2 At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by 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 affects 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 by Declarant.

9.3.3 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, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, 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.

#### 10. ANNEXATION AND FUTURE DEVELOPMENT

10.1 Annexation. For so long as there is a Class B membership, annexation of additional real property and dedication of Common Area requires HUD/VA approval. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Cobb County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration or filing an amendment to the Declaration which has been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant. At the expiration of the Class B membership, no real property may be annexed to the Property unless such annexation 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.

#### 11. MISCELLANEOUS

11.1 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

11.2 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.



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11.3 Headings. The headings of the sections hereof are for convenience only and shall not affect the meaning or interpretation of this Declaration.

11.4 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

11.5 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 Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses: if to Declarant, at: Pleasant Hill, LLC, 461 Laurel Hill Court, Kennesaw, GA 30152, and if to an Owner, at: such Owner's address as registered with the Association in accordance with the By-Laws. Any written communication transmitted in accordance with this Section 11.5 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

11.6 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. In the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability and each and every owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

11.7 Insurance.

11.7.1 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 such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board 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 insured be given thirty (30) days prior written notice of any cancellation of such policies.

11.7.2 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 or 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. Any damage or destruction shall be repaired or reconstructed unless,

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, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Membership entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant, 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. 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 defray 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 like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association. 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 Development in a neat and attractive condition.

11.7.3 The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

11.7.4 In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

11.8 Time of the Essence. Time is of the essence of this Declaration.

12. MORTGAGEE PROVISIONS The following provisions are for the benefit of holders of first mortgages on Residences in RESERVE AT MILLERS CREEK. The provisions of this Section 12 apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association, which request states the name and address of such holder, insurer, guarantor and the Residence number (an "eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Residence on which there is a first mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Residence subject to the mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however,



notwithstanding this provision, any holder of a first mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residence of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days; (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or (d) any proposed action which would require the consent of a specified percentage of eligible mortgagees.

12.2 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first mortgagees or at least two thirds (2/3) of the total Members entitled to vote thereon consent, the Association shall not: (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this paragraph); (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Residence; (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision); (d) fail to maintain insurance, as required by this Declaration; or (e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

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

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

12.5 Amendment by Board. Should the Veterans Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Section 12 or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Section 12 to be recorded to reflect such changes.

12.6 HUD and Veterans Administration Approval. As long as the Declarant has

an option unilaterally to subject property to this Declaration as provided in Section 10, the following actions shall require the prior approval of the Department of Housing and Urban Development (HUD) and the Veterans Administration so long as HUD and/or the Veterans Administration is insuring or guaranteeing any mortgage in the Development: annexation of additional property to the Development, except for annexation by Declarant in accordance with Section 10, pursuant to a plan of annexation previously approved by HUD or the Veterans Administration; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

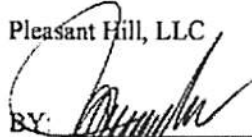
12.7 Applicability of Section 12. Nothing contained in this section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws or Georgia law for any of the acts set out in this section.

12.8 Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the Association's request.

12.9 Dissolution. If the Association is dissolved, the assets shall be dedicated to a public body, or conveyed to a non-profit organization with similar purposes.

This Declaration has been executed by Declarant on the date first above written.

Signed, sealed and delivered on the 10<sup>th</sup> day of September, 2001, in the presence of:

Pleasant Hill, LLC  
BY:   
by: James W. Boone  
title: Partner

  
Witness

  
Notary Public  
Notary Public Cobb County, Georgia  
My Commission Expires March 24, 2003





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2001

Exhibit "A" to  
Declaration of Covenants,  
Restrictions and Easements for Reserve at Millers Creek

All that tract or parcel of land lying and being in Land Lot 6, 18<sup>th</sup> District and Land Lot 1327 of the 19<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia and being the property shown on Final Plat of Miller's Creek, Phase VII, recorded in Plat Book 192, Page 39, Cobb County, Georgia records.

TOGETHER WITH:

All that tract or parcel of land lying and being in Land Lots 1264 and 1327, 19<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia and being the property shown on Final Plat of Miller's Creek, Phase VIII, recorded in Plat Book 199, Page 12, Cobb County, Georgia records.

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2001

Exhibit "B" to  
Declaration of Covenants,  
Restrictions and Easements for Reserve at Millers Creek

Common Property

ALL THAT TRACTOR PARCEL OR LAND lying and being in Land Lot 6, 18<sup>th</sup> District,  
2<sup>nd</sup> Section, Cobb County, being known as "Detention Pond" as shown on that Final Plat of Miller's  
Creek, Phase VII, recorded in Plat Book 192, Page 39, Cobb County, Georgia records.



BY-LAWS  
OF  
RESERVE AT MILLERS CREEK CIVIC ASSOCIATION, INC.

1. NAME AND LOCATION

The name of the association is RESERVE AT MILLERS CREEK CIVIC ASSOCIATION, INC. ("Association"). The principal office of the Association (until otherwise designated by the Board, as hereinafter defined) shall be located at 461 Laurel Hill Court NW, Kennesaw, GA 30152, but meetings of members and directors may be held at such other places within the State of Georgia as may be designated by the Board.

2. DEFINITIONS

Unless otherwise set forth herein, the terms used in these By-Laws shall have the same meanings ascribed to such terms as set forth in the Declaration of Covenants, Restrictions and Easements for Reserve at Millers Creek dated as of September 20, 2001, with respect to a new community known as Reserve at Millers Creek, which has been executed by Pleasant Hill, LLC, as Declarant, and by duly authorized officers of the Association, and is filed for record in the office of the Clerk of the Superior Court of Cobb County, Georgia, in Deed Book 13428, Page 475, Cobb County, Georgia records, as such Declaration may be amended from time to time, and which Declaration is incorporated herein by reference.

3. MEETINGS

3.1 Annual Meeting of Members. The regular annual meeting of the Members shall be held not later than six (6) months past the end of the fiscal year of the Association, on a date (which is not a legal holiday) and at such place within the State of Georgia as shall be designated in the call of meeting pursuant to Section 3.3. If no such date is designated, the annual meeting shall be held on the first Wednesday in August, if not a legal holiday, and if a legal holiday, then on the next business day succeeding. The Members shall at such annual meeting elect a Board of Directors for the ensuing year, in the manner provided in Section 4.1, and shall have authority to transact any and all business which may be brought before such meeting.

3.2 Special Meeting of Members. Special meetings of Members shall be held, at such place within the State of Georgia as shall be designated in the call of the meeting. Special meetings may be called by the President at any time and must be called by the President when so requested in writing by any two directors or by twenty-five percent (25%) of the Membership.

3.3 Notice of Meetings. Written notice of the place, date and time of every annual or special meeting of Members shall be mailed to each Member at least fifteen (15) days before such

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meeting. Each Member shall register his address with the Association and notices of meetings shall be mailed to him at such address. If for a special meeting, such notice shall state the purpose or purposes of the meeting. It shall not be necessary that notice of an annual meeting specify the business to be transacted at such meeting, but such notice shall specify the number of directors to be elected at such annual meeting.

3.4 Quorum. Unless otherwise provided in the Declaration, a quorum at any meeting of Members, whether annual or special, shall consist of the presence at such meeting, in person or by proxy, of Members entitled to cast one-tenth of the votes of the Membership. Unless otherwise provided in the Articles of Incorporation of the Association, or in the Declarations or in these By-Laws, a majority of the votes entitled to be cast by all Members present at a meeting shall be necessary and sufficient to decide and act upon any question which shall come before the meeting. No business shall be transacted at any meeting unless a quorum is present.

3.5 Voting. Voting rights of Members shall be as set forth in the Declaration. Where any Member is a group or entity other than one individual person, the vote on behalf of such Member shall be exercised only by such individual person as shall be designated in proxy instrument duly executed by or on behalf of such Member and delivered to the Secretary of the Association.

#### 4. DIRECTORS

4.1 Number. The affairs of the Association shall be managed by an initial Board of three (3) directors, who need not be Members of the Association. Once the control of the Association passes to the Members as provided in the Declaration, the affairs of the Association shall be managed by a Board of not less than three (3) nor more than nine (9) directors.

4.2 Election by Members. At the first annual meeting after control of the Association has passed to the Membership, the Members shall elect three (3) directors to serve until the next annual meeting. The number of directors may be increased by amendment to this provision by the By-Laws.

4.3 Removal. Once the control of the Association passes to the Members as provided in the Declaration, any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

4.4 Compensation. No director shall receive compensation for any service he may render to the Association. Directors may be reimbursed for actual expenses incurred in the performance of duties for the Board.

4.5 Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.



4.6 Nomination. Nomination for elected members to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

4.7 Election. Election to the Board shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.8 Regular Meeting of Directors. Regular meetings of the Board shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

4.9 Special Meeting of Directors. Special meetings of the Board shall be held at such place within the State of Georgia as shall be designated in the call of such meetings. Special meetings of the Board may be called by the President at any time, in his discretion, and must be called by the President whenever so requested in writing by two members of the Board.

4.10 Notice of Meetings. Notices of special meetings of the Board shall be given by the President or the Secretary to each member of the Board, not less than three (3) days' before the time at which such meetings are to convene. Such notices may be given by telephone, or by any other form or written or verbal communication. It shall not be necessary for notices of special meetings of the Board to state the purposes or objects of the meetings. The directors may waive notice of any meeting. Action may be taken by the directors without a meeting if such action is consented to in writing by all of the directors.

4.11 Quorum. A quorum at any meeting of the Board shall consist of a majority of the members of the Board. Unless otherwise provided in the Articles of Incorporation of the Association, or in these By-Laws, or in the Declaration, a majority of those present at any meeting at which a quorum is present may decide any questions which may come before the meeting.

4.12 Powers. The Board shall have power to: (a) adopt and publish rules and regulations governing the use of the Common Property and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties of the infraction thereof; (b) suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association and to suspend the voting rights and right to use of the recreational facilities of a Member for a period of

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not more than sixty (60) days after notice and hearing for infraction of published rules and regulation; (c) exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provision of these By-Laws, the Articles of Incorporation, or the Declaration; (d) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive meetings of the Board; and (e) employ such employees or hire such independent contractors as they deem necessary to assist the Board in carrying out its duties.

4.13 Duties. It shall be the duty of the Board to: (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote; (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed; (c) as more fully provided in the Declaration, to: (1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; (2) send written notice of each assessment to every Member subject thereto at least thirty (30) days in advance of each annual assessment period; and (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Member personally obligated to pay the same; (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid (the Board having the authority to charge a reasonable fee for the issuance of such certificates), which certificate, if it states that an assessment has been paid, being conclusive evidence of such payment; (e) procure and maintain adequate insurance on property owned by the Association, as provided in Section 10 of the Declaration; (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; (g) cause the Common Property to be maintained; and (h) 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 or municipal entity having jurisdiction over the roads for Brushy Creek.

## 5. OFFICERS AND THEIR DUTIES

5.1 Enumeration of Offices. The officers of this Association shall be a president, who shall at all times be a member of the Board, a secretary, a treasurer and such other officers as the Board may from time to time by resolution create.

5.2 Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the members.

5.3 Annual Elections. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.



5.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

5.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

5.7 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 5.4.

5.8 Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Board, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.

(c) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; when directed by the Board, cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

## 6. MISCELLANEOUS

6.1 The Declaration. All provisions contained in the Declaration with regard to rights, powers and duties of the Association, the Members thereof (including, without limitation, classes of Members and qualifications and rights of the Members of each class), and the Board thereof, are hereby incorporated into these By-Laws by this reference, with the same effect as if such provisions were fully set forth herein.

6.2 Committees. The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and the Nominating Committee, as provided in these By-Laws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

6.3 Books and Records. The books and records of the Association shall be open for inspection by any Member of the Association during reasonable business hours.

6.4 Indemnification. The Association shall indemnify any person made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he, his testator, or intestate, is or was a director, officer or employee of the Association, against the reasonable expenses, including attorneys' fees, actual and reasonably incurred by him in connection with the defense of the action, suit, or proceeding or in connection with any appeal in it. This right of indemnification shall not apply (1) in relation to matters as to which the director, officer or employee shall be adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the Association or (2) in relation to matters in any such actions suit, or proceeding that are settled or compromised. The right to indemnification covered by this section shall not restrict the power of the Association to make any indemnification permitted by law, subject to applicable limitations in the Articles of Incorporation and the Declaration.

6.5 Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

6.6 Parliamentary Rules. Robert Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the person presiding over the proceeding.

6.7 Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration, these By-Laws, then the provisions of the Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.8 Notices. Unless otherwise specified in the Declaration of By-Laws, all notices, demands, bills, statements, or other communications required or permitted to be sent under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid: (a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the last known address of the Member; or (b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members. If there are multiple Co-owners of a Lot, notice to one (1) shall be deemed notice to all.

6.9 Amendment. These By-laws may be amended by the Board, subject to the limitations of Georgia law, the Declaration and the Articles of Incorporation of the Association.



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Jay C. Stephenson  
Clerk of Superior Court Cobb Cty. Ga.

6.10 Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

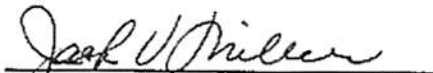
6.10.1 Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a fine, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property

6.10.2 Notices. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice, impose a fine. The notice shall state: (i) the nature of the alleged violation; (ii) that the alleged violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine; (iii) that any statement, evidence, and witnesses may be produced by the alleged violator at the hearing; and (iv) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

6.10.3 Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the alleged violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

END OF BY-LAWS

I certify the foregoing to be a true and correct copy of the By-Laws of the Reserve at Millers Creek Civic Association, Inc.

  
Secretary

Reserve at Millers Creek Civic Association