

# Millpond Manor Covenants, Exhibits, and By Laws

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
MILLPOND MANOR**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 13th day of February, 1996 by Millpond Manor Associates, Inc., a Georgia corporation (the "Declarant").

Declarant is the owner of the real property described in Exhibit "A," which is attached and incorporated by reference. By this Declaration, Declarant imposes upon the Properties (as defined in article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance thereof, Declarant has caused the Millpond Manor Community Association, Inc. to be formed as a Georgia non profit corporation to own, operate and maintain the Common Area, as defined below, and to administer and enforce the provisions of this Declaration, the By Laws and use restrictions and rules promulgated pursuant to this Declaration.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors in title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

This document does not and is not intended to create a condominium within the meaning of the O.C.G.A. § 44 3 70 et seq.

**Article I  
DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with those areas, if any for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Millpond Manor Community Association, Inc., as filed with the Secretary of State of the State of Georgia.

1.3. "Association": Millpond Manor Community Association, Inc., a Georgia non profit corporation, its successors or assigns.

1.4. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By Laws and generally serving the same role as the board of directors under Georgia corporate law.

1.5. "Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person's business.

- 1.6. "By Laws": The By Laws of Millpond Manor Community Association, Inc., attached as Exhibit "E" as they may be amended.
- 1.7. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.
- 1.8. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred by the Association, including any reasonable reserve as the Board may find necessary and appropriate pursuant to this Declaration, the By Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Membership for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association.
- 1.9. "Community Wide Standard": The Standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Architectural Review Committee.
- 1.10. "Declarant": Millpond Manor Associates, Inc., a Georgia corporation or any successor, successor in title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant provided there shall be only one Person entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.
- 1.11. "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article IX.
- 1.12. "General Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.
- 1.13. "Master Plan": The preliminary land use plan for "Millpond Manor" prepared by Seiler & Associates, Inc. of Stockbridge, Georgia, dated , as it may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article VII.
- 1.14. "Member": A person entitled to membership in the Association pursuant to Section 3.2.
- 1.15. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.
- 1.16. "Mortgagee": A beneficiary or holder of a Mortgage.
- 1.17. "Mortgagor": Any Person who gives a Mortgage.
- 1.18. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a

recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.19. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.20. "Properties": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.21. "Public Records": The Office of Clerk of the Superior Court of Fayette County, Georgia, or such other place which is designated as the official location for recording public land records.

1.22. "Special Assessment": Assessments levied in accordance with Section 8.5.

1.23. "Specific Assessment": Assessments levied in accordance with Section 8.6.

1.24. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article VII which subjects additional property to this Declaration and/or imposes expressly or by reference, additional restrictions and obligation on the land described in such instrument.

1.25. "Unit": A portion of the Properties, whether improved or unimproved which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records with respect to any portion of the Properties, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Area or property dedicated to the Public.

## **Article II** **PROPERTY RIGHTS**

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to impose reasonable membership requirements, adopt a code of rules governing use of any structure or improvement on the Common Area, and charge reasonable admission or other use fees for the use of any recreational or social facilities situated upon the Common Area;
- (e) The right of the Board to permit use of any recreational or social facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board; and
- (f) The right of the Board to suspend the right of an Owner to use recreational and social facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration,

any applicable Supplemental Declaration, the By Laws, or rules of the Association after notice and a hearing pursuant to Section 3.23 of the By Laws;

- (g) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7 and subject to the requirements of Section 12.6, if applicable; and
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred and subject to the requirements of Section 12.6, if applicable.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3. Condemnation. Each Owner shall be entitled to written notice if any part of the Common Area shall be taken, or conveyed in lieu of under threat of condemnation, by any authority having the power of condemnation or eminent domain. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" and "B" of this Declaration, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1 (c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

### **Article III**

#### **MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership may adopt pursuant to Article X. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By Laws, the Articles and the laws of the State of Georgia.

3.2. Membership. Every Owner shall be a member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all coOwners shall share the privileges

of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By Laws. All co Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

- (a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote for such Unit. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.
- (b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By Laws and the Articles, are specified in the relevant sections of this Declaration, the By Laws and the Articles. The Class "B" Member may appoint the members of the Board of Directors, as specified in Section 3.3 of the By Laws. The class "B" membership shall terminate as provided in Article III of the By Laws. Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

#### **Article IV**

#### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common area), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the ByLaws and consistent with the Community Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the By Laws, or Association rules in accordance with procedures set forth in the By Laws, including reasonable monetary fines and suspension of the right to vote and to use any

recreational or social facilities within the Common Area. In addition, in accordance with section 3.23 of the By Laws, the Association may exercise self help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restrictions or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit local governments to enforce their ordinances within the Properties for the benefit of the Association and its Members.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. For so long as the Declarant owns any property described on Exhibits "A" or "B," the Declarant may designate sites within the Properties for public or quasi public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member, including members of the committees established under Article IX, against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Georgia law.

The officers, directors, and committee members shall not be liable for any mistakes of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Area. The Association may dedicate portions of the Common Area to Fayette County, Georgia or to any other local, state, or federal governmental or quasi governmental entity.

**4.8. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

4.9. Ponds. Within or adjacent to the Properties is a pond. No representation is made or shall be effective unless in writing signed by the Declarant regarding the ownership or use of such pond. In the event such pond is conveyed to a governmental entity, the pond and shore area maybe available for access by the general public as well as Members of the Association. Unless such pond is conveyed to the Association as Common Area, the Association shall not be responsible for maintenance of the pond and the surrounding areas unless it is made a part of the Area of Common Responsibility as provided in Section 5.1. Notwithstanding the foregoing to the contrary, neither the Association nor the Declarant shall be liable for any injury, loss, or damage out of any Person's use or lack of use of such pond, and each Owner and Person making use of such areas shall assume all risks.

## **Article V** **MAINTENANCE**

### 5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all Common Area;

(ii) all landscaping, and other flora, parks, bridges, swimming pools, recreational centers, playgrounds and other structures and improvements, including any pedestrian pathways/trails, situated upon the Common Area;

(iii) all landscaping, entry features, sidewalks and signage within or adjacent to public rights of way within or abutting the Properties, including such Landscape easement areas identified in Section 11.6 which the Board in its sole discretion, determines is the maintenance responsibility of the Association; and

(iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may maintain other property which it does not own, including, without limitation, storm drainage facilities, and property dedicated to the public, if the Board of Directors



determines that such maintenance is necessary or desirable to maintain the Community Wide Standard.

- (b) There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities.
- (c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment. Notwithstanding the foregoing, the Board may, within its sole discretion, allocate the expense of maintenance, repair, and replacement which benefits one or more, but less than all Units, as a Specific Assessment in accordance with the benefit so received by such Units, pursuant to Section 8.6.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, landscaping and other improvements comprising the Unit in a manner consistent with the Community Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Unit. No Unit Owner which is subject to a Landscape Easement referenced in Section 11.6 shall remove any tree, shrub, or landscaping vegetation from such area without prior written approval granted pursuant to Section 9.2 hereof.

Owners shall not permit any structures, equipment or other items on the exterior portions of a Unit to become rusty, dilapidated or otherwise fall into disrepair. In addition to any other enforcement rights, if an owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.6. The Association shall afford the Owner, reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. All maintenance shall be performed in a manner consistent with the Community Wide Standard and all applicable covenants. Maintenance shall include the responsibility for repair and replacement as necessary. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4. Party Walls and Similar Structures. Each wall, fence or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

## **Article VI**

### **INSURANCE AND CASUALTY LOSSES**

#### **6.1. Association Insurance.**

- (a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of Insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:
  - (i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on the other portions of the Area of Common Responsibility to the

extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. the Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf, if generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation Insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one sixth of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Fayette County Georgia area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.23 of the By Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.6.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

- (iv) contain an inflation guard endorsement; and
- (v) include and agreed amount endorsement, if the policy contains a coinsurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement precluding cancellation, invalidation, suspension, or non renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (iv) an endorsement excluding Owner's individual policies from consideration under any "other insurance" clause;
- (v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non renewal;
- (vi) a cross liability provision; and
- (vii) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60 day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the

Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

## **Article VII**

### **ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1. Annexation Without Approval of Membership. Declarant may from time to time within 7 years of recording this Declaration in the Public Records unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing in the Public Records a Supplemental Declaration describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 7.1, for the purpose of removing any portion of

the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

7.4. Additional Covenants and Easements. The Declarant may subject any portion of the property submitted to this Declaration to additional covenants and easements by filing a Supplemental Declaration in the Public Records, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the subject property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or B.

## **Article VIII** **ASSESSMENTS**

### 8.1. Creation of and Obligation for Assessments.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy, assessments for the Common Expenses of the Association. There shall be three types of assessments: (a) General Assessments as described in Section 8.3; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of 18% per annum or such higher rate as the Board may establish, subject to the limitations of Georgia law), late charges in such amount as the Board may establish by resolution (subject to the limitations of Georgia law), costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.7. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; provided, the Board may by resolution permit payment in two or more installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt himself from liability for assessments by non use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2. Declarant's Obligation for Assessments. During the Class "B" Membership, Declarant may annually elect either to pay assessments based on its Units subject to assessment or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year: provided, regardless of the Declarant's election, the Declarant's Units shall be considered in computing the General Assessment rate under Section 8.3. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Membership, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

### 8.3. Computation of General Assessments.

- (a) At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the Association's estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4.

General assessments shall be levied equally on all Units subject to assessment pursuant to Section 8.8. Such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to partial or full assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Declarant under

Section 8.2), which may be treated as either a contribution or an advance against future assessments due from the Declarant, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the final budget and notice of the amount of the General Assessment for the upcoming year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Reserve Budget and Capital Contribution. The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments over the budget period.

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. So long as the total amount of Special Assessments allocable to a Unit does not exceed \$250.00 in any one fiscal year, the Board may impose the Special Assessment. Except as provided in Section 6.1(c) hereof, any Special Assessment which would cause the amount of Special Assessments allocable to any Unit to exceed this limitation shall require the affirmative vote or written consent of Members representing at least 67% of the total Class "A" votes in the Association and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied equally on all Units.

8.6. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, pest control, etc.) which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and
- (b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice

and an opportunity for a hearing, in accordance with By Laws Section 3.23, before levying any Specific Assessment under this subsection (b).

8.7. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Georgia law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Georgia law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessment shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month after a Unit subject to this Declaration is conveyed to a Person who is not a Builder, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this article, whichever is later, provided, however, assessment shall not commence on any Unit used for a model home during the period it is used for such purposes. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.10. Exempt Property. The following property shall be exempt from payment of assessments:

- (a) all Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and
- (b) any property dedicated to and accepted by any governmental authority or public utility.



**Article IX**  
**ARCHITECTURAL STANDARDS**

9.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article, and approval of the Architectural Review Committee under Section 9.2.

Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. However, modification to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect, unless otherwise acceptable to the Architectural Review Committee, in its sole discretion. All plans and specifications shall be subject to review as provided herein.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

9.2. Architectural Review. Responsibilities for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the Architectural Review Committee ("ARC"). The ARC may be divided into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. Until 100% of the Properties have been developed and conveyed to owners other than Builders, The Declarant shall have the right to appoint all members of the ARC. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the ARC. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers, or other professionals. The Board may employ architects, engineers, or other Persons as it deems necessary to enable the ARC to perform its review. The ARC may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

9.3. Guidelines and Procedures.

- (a) Design Guidelines. The Declarant has prepared Design Guidelines for the Properties which contain general provisions applicable to all of the Properties, as well as landscape plans and other specific provisions which vary from one portion of the Properties to another depending upon the location and unique characteristics. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the committees in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARC and compliance with the Design Guidelines does not guarantee approval of any application.

The ARC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the ARC is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The ARC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines.

- (b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. Such plans and specification shall be in such form and shall contain such information as may be reasonably required by the ARC pursuant to the Design Guidelines, including, without being limited to:
- (i) a site plan showing the location of all proposed and existing structures on the Unit, including building setbacks, open space, driveways, walkways and parking spaces, including the number thereof and all siltation and erosion control measures;
  - (ii) a foundation plan;
  - (iii) a floor plan;
  - (iv) exterior elevations of all proposed structures and alterations to existing structures, as such structures will appear after all back filling and landscaping are completed;
  - (v) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed structures and alterations to existing structures; and
  - (vi) plans for landscaping and grading.

In reviewing each submission, the ARC may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Decisions of the ARC may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as committee members change over time.

In the event that the ARC fails to approve or to disapprove in writing any application within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the forgoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARC pursuant to Section 9.5.

All work shall be completed within one year of commencement or such shorter period as the ARC may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the ARC.

**9.4. No Waiver of Future Approvals.** Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to

constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

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

9.6. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARC, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the ARC and its members shall be defended and indemnified by the Association as provided in Section 4.6.

9.7. Enforcement. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARC, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by the ARC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with Section 3.23 of the By Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

**Article X**  
**USE RESTRICTIONS AND RULES**

10.1. Plan of Development; Applicability ; Effect. Declarant has established a general plan of development for the Properties in order to enhance all Owner's quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Member's ability to respond to changes in circumstances, conditions, needs, and desires within the community and to regulate and control the Area of Common Responsibility. The Properties are subject to the land development, architectural, and design provisions set forth in Article IX, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By Laws, and the rules of the Association.

10.2. Authority to Promulgate Use Restrictions and Rules. Initial use restrictions applicable to all of the Properties are attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

- (a) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions set forth on Exhibit "C." The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless, at a meeting of the Association, it is challenged and overturned by a vote of at least 51 % of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By Laws.

- (b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing at least 51 % of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.
- (c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee.
- (d) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of any inconsistency between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

10.3. Owner's Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded 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 Unit can be affected and that the Use Restrictions and rules may change from time to time.

10.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C," neither the Board nor the Members may adopt any rule in violation of the following provisions:

- (a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.
- (b) Speech. The freedom of speech rights of Owners and occupants shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Units.
- (c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in residences located in single family residential neighborhoods shall not be abridged except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.
- (d) Household Composition. No rule shall interfere with the freedom of occupants of Units 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 Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.
- (e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, 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 Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.
- (f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.
- (g) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or

transfer of any Unit greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.

- (h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.
- (i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

The limitations in this Section 10.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 15.2.

## **Article XI** **EASEMENTS**

11.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### 11.2. Easements for Utilities, Etc.

- (a) There are hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitations, any governmental or quasi-governmental entity and any utility company) perpetual non exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails, wetlands and drainage systems; irrigation systems, street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Properties.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes.

- (b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration, the non exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."
- (c) Any damage to a Unit resulting from the exercise of the easements described in subsection (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.
- (d) Declarant reserves unto itself the right, in the exercise of its sole discretion upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 11.2, or (ii) to define the limits of any such easements; provided, however, Declarant shall relocate, at its own expense, any utility lines or facilities located on or under that portion of the Properties being released.

11.3. Easements for Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement over the Properties for access, ingress and egress to creeks, streams, and wetlands located within the Area of Common Responsibility and for (a) installing, keeping, maintaining, repairing, and replacing pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) constructing, maintaining, and repairing any bulkhead, retaining wall, levee, or other structure retaining water; and (c) removing trash and other debris therefrom. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

11.4. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.

11.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By Laws, and rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, members of the ARC pursuant to Article IX, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry

into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.6. Entrance and Landscape Easements. There are hereby reserved to Declarant (so long as the Declarant owns any property described on Exhibits "A" or "B" to this Declaration), the Association and the designees of each, non exclusive easements for access, installation, pruning and other maintenance, removal and replacement of landscaping over those portions of the Properties lying adjacent to public road right of ways, and over such other portions of the Properties as are designated as a "Landscape Easement" on the recorded plats of the Properties. Such easement shall include the right to install fences or walls, to disturb existing landscaping within the Landscape Easement, to maintain improvements, to dig holes and to temporarily pile dirt and plant material upon the Landscape Easement, provided the area is restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of the activities authorized hereunder. Nothing herein shall obligate the Declarant or the Association to undertake any of the activities which such easement authorizes. Except as may otherwise be provided in any written agreement executed by the Declarant, the Declarant may, but shall not be obligated to, install fences or walls and landscaping within such public rights of way and/or these Landscape Easements at its option, at such times and in such numbers and locations as it may deem appropriate in its sole discretion. These Landscape Easement areas shall not be distributed by any Owner without prior approval in accordance with Section 9.2.

## **Article XII**

### **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article 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 (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming 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 Properties or which affects any Unit 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 a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By Laws relating to such Unit or the Owner or Occupant which is not cured within 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 Holders.

12.2. 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 Unit in the case of



distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3. 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 Unit.

12.4. Applicability of Article XII. Nothing contained in this Article 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 Article.

12.5. 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 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.6. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the Federal Housing Administration or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the mortgage on any Unit: annexation of additional property other than that described on Exhibit "B," dedication, conveyance or mortgaging of Common Area, or material amendment of this Declaration. If either FHA or VA is insuring or guaranteeing the mortgage on any Unit, no portion of the Common Property may be mortgaged or conveyed unless at least 67% of the total Class "A" Members consent, not including the Declarant.

### **Article XIII** **DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

The Declarant and Builders authorized by the Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

The Declarant and its employees, agents, and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

No Person shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines made after termination of the Class "B" Membership shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties primarily for development and sale.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 20 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

#### **Article XIV**

### **DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

14.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 14.2, shall be resolved using the procedures set forth in Section 14.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

14.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 14.3:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Architectural Standards) and Article X (Use Restrictions and Rules);
- (c) any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute an independent action under federal law or the laws of the State of Georgia in the absence of a claim based on the Declaration, By Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;
- (d) any suit in which all parties are not Bound Parties; and
- (e) any suit as to which the applicable statute of limitations would expire within 180 days of the Notice pursuant to Section 14.3(a), unless the party or parties against whom the claim is made agree to all the statute of limitations as to such claim for such period as may be reasonably necessary to comply with this Article.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.3, but there shall be no obligation to do so. The submission of an

Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 14.3 shall require the approval of the Association.

14.3. Mandatory Procedures for All Other Claims. All Claims other than Exempt claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including date, time location, persons involved, and Respondent's role in the Claim;
2. the basis of the Claim (i.e., the provisions of this Declaration, the ByLaws, the Articles or rules or other authority out of which the Claim arises);
3. what Claimant wants Respondent to do or not do to resolve the Claim; and
4. that claimant wishes to resolve the claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.
2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of the Neighborhood Justice Center of Atlanta or a dispute resolution center providing similar services in the Fayette County or metropolitan Atlanta, Georgia area upon which the parties may mutually agree.
2. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
3. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). the Termination of Mediation notice shall set forth when and

where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Georgia. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Georgia.

14.4. Allocation of Costs of Resolving Claims.

- (a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 14.3 (a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 14.3(c).
- (b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 14.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 14.4(c).
- (c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

14.5. Enforcement of Resolution. If the parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 14.3 and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in

Section 14.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non complying Party (or if more than one non complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

**Article XV**  
**GENERAL PROVISIONS**

15.1. Duration. This Declaration shall run with and bind the Properties for a period of 20 years and shall be automatically renewed for successive 20 year terms unless this Declaration is terminated pursuant to the requirements and procedures of Georgia law to terminate covenants running with the land. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

15.2. Amendment.

- (a) By Declarant. Until the sale of the first Unit to a person other than a Builder, the Declarant may unilaterally amend this Declaration for any reason. Thereafter, Declarant may unilaterally amend this Declaration in any manner if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; (iv) to enable any reputable private insurance company to insure mortgage loans of the Units; or (v) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.
- (b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of 67% of the total Class "A" votes in the Association, including 67% of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

- (c) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

15.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIV, if applicable.

15.5. Cumulative Effect: Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6. Use of the Words "Millpond Manor." No Person shall use the words "Millpond Manor" in any printed or promotional material without the Declarant's prior written consent. However, Owner's may use the words "Millpond Manor" in printed or promotional matter where such terms are used solely to specify that particular property is located within the Millpond Manor development and the Association shall be entitled to use the words "Millpond Manor" in its name.

15.7. Compliance. Every Owner and Occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By Laws, and the Use Restrictions and Rules promulgated pursuant to Article X. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.8. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligation, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 13th day of February, 1996.

DECLARANT: Millpond Manor Associates, Inc., a Georgia corporation

By: Patsy H. Andrews

Its: Secretary, CEO

Attests: John Churchman

Its:

Signed, sealed, and delivered this 13th day of February, 1996 in the presence of:

WITNESS

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 13<sup>th</sup> day of FEBRUARY, 1996

DECLARANT: Millpond Manor Associates, Inc., a Georgia corporation

By: Patsy H. Andrews

Its: Secretary, CEO

Attests: John Churchman

Its: John

Signed, sealed, and delivered this 13<sup>th</sup> day of FEBRUARY 1996, in the presence of:

[Signature]

WITNESS

[Signature]



**EXHIBIT "A"**  
Land Initially Submitted

All that tract or parcel of land lying and being in Land Lot 160 of the 4th District and Land Lots 7 and 8 of the 6th District of Fayette County, Georgia, containing approximately 55 Acres and being all property located in Unit I of the Millpond Manor Subdivision as shown on the Final Plat of Millpond Manor Unit I prepared by Seiler & Associates Inc., dated 2-2-96, which plat is recorded in Plat book 27, pages 98-100, Fayette County Records, and is by reference incorporated herein and made a part hereof.

**EXHIBIT "B"**  
Land Subject to Annexation

All that tract or parcel of land lying and being in Land Lots 129 and 160 of the 4th District and Land Lots 7 and 8 of the 6th District of Fayette County, Georgia and being within one mile of any boundary to that property described on Exhibit "A" to the Declaration of Covenants, Conditions, and Restrictions for Millpond Manor.

**EXHIBIT "C"**  
Initial Use Restrictions and Rules

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article X of the Declaration.

1. General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office of the Declarant and offices for any property manager retained by the Association consistent with this Declaration.
2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:
  1. Parking of any vehicles on streets or thoroughfares, or parking of commercial vehicles or equipment, trucks other than pickups, mobile homes, recreational vehicles, campers, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;
  2. Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted on a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;
    - i. Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;



- ii. Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;
- iii. Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any stream, pond, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;
- iv. Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;  
(g) Obstruction or recharmeling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;
- v. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide, combine, or replat Units which it owns.
- vi. Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door to door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

- vii. Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without the prior approval of the ARC pursuant to Article IX;
- viii. Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or

- unimproved, except in strict compliance with the provisions of Article IX of the Declaration. This shall include, without limitation, mailboxes, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above ground swimming pools; holiday lights; flags; fountains; antennas, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; and hedges, walls, dog runs, animal pens, or fences of any kind (invisible pet fences shall not be allowed in the front yard and are allowed in the back yard only upon approval of the ARC);
- ix. Erecting any sign of any kind within the Properties without the written consent of the Board, except entry and directional signs installed by Declarant. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering, and placement of such a sign. The Board and the Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Except as provided above, no signs, flags, banners, or similar items advertising or providing directional information with respect to activities being conducted within or outside the Properties shall be displayed or posted within the Properties; or
  - x. Removal of trees measuring four inches or more in diameter at 3 feet above ground level except for diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons;
  - xi. Operation of motorized vehicles on pathways or trails maintained by the Association;
  - xii. Decorating a Unit with religious or holiday displays in an offensive manner or during periods other than those regularly accepted within the community, or which, in the sole discretion of the Board, invite the presence of Persons onto the Properties solely for the purpose of viewing such displays or create excessive traffic conditions within the Properties; or
  - xiii. Any activity which materially disturbs or destroys the vegetation, wildlife, wetlands, or air quality within the Properties or which use excessive amounts of water.
3. Leasing of Units. "Leasing," for purposes of this paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By Laws, and the Use Restrictions and Rules.

**EXHIBIT "D"**  
**Rules of Arbitration**

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").
2. Each Party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)) so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings,

selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("Chair").

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the Georgia chapter of The Community Association Institute, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4.. No Person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.

5. The Arbitrator or Chair, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There will be no posthearing briefs.

13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

**BY LAWS**  
**OF**  
**MILLPOND MANOR COMMUNITY ASSOCIATION, INC.**

**Article I**

**Name, Principal Office, and Definitions**

- 1.1. Name. The name of the corporation is Millpond Manor Community Association, Inc. (the "Association").
- 1.2. Principal Office. The principal office of the Association shall be located in Fayette County, Georgia. The Association may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.
- 1.3. Definitions. The words used in these By Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Millpond Manor filed in the Fayette County, Georgia, Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

**Article II**

**Association: Membership, Meetings, Quorum, Voting, Proxies**

- 2.1. Membership. The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the declaration, the terms of which pertaining to membership are incorporated by this reference.
- 2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board, either within the Properties or as convenient as is possible and practical.
- 2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.
- 2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 25% of the Total Class "A" votes in the Association.
- 2.5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the association, with postage prepaid.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Member's represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Georgia law. All proxies shall be in writing specifying the Unit(s) for which it is given, signed by the Member or its duly authorized attorney in fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Majority. As used in these By Laws, the term "majority" shall mean those votes, Owners, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

2.11. Quorum. Except as otherwise provided in these By Laws or in the Declaration, the presence, in person or by proxy, of Members representing 25% of the Total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association.

2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote thereon. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

### **Article III**

#### **Board of Directors: Number, Powers, Meetings**

##### **A. Composition and Selection.**

3.1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or Residents; provided, no Owner and Resident representing the same Unit may serve on the Board at the same time. A "Resident" shall be any natural person 18 years of age or older whose principal place of residence is a Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, employee or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2. Number of Directors. The Board shall consist of three to five directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of four directors.

3.3. Directors During Class "B" Membership. Subject to the provisions of Section 3.5, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member during the Class "B" Membership. The Class "B" Membership shall terminate:

1. when 75% of the total number of Units proposed by the Master Plan for the property described on Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders;
2. December 31, 2002; or
3. when, in its discretion, the Class "B" Member so determines.

3.4. Nomination and Election of Directors. Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Each Owner may cast the entire vote assigned to his or her Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5. Election and Term of Office. Not later than the first annual meeting after the termination of the Class "B" Membership, the Board shall be increased to five directors and an election shall be held. The Class "A" Members shall elect three directors for a two year term and two directors for a one year term. Thereafter, all directors shall be elected for a two year term. The directors elected by the Class "A" Members shall hold office until their respective successors have been elected.

3.6. Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by Member's holding two thirds of the votes entitled to be cast for his or her election. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three or more consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

## B. Meetings.

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of a regular meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) facsimile, computer, fiberoptics or such other communication device. All such notices shall be given at the director's telephone

number, electronic receiving number, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic device shall be delivered, telephoned, or transmitted at least 72 hours before the time set for the meeting.

3.10. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting; or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15. Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any



meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature.

3.16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.17. Powers. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not directed by the Declaration, Articles, these By Laws, or Georgia law to be done and exercised exclusively by the membership generally.

3.18. Duties. The duties of the Board shall include, without limitation:

1. preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
2. levying and collecting such assessments from the Owners;
3. providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
4. designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
5. depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
6. making and amending use restrictions and rules in accordance with the Declaration;
7. opening of bank accounts on behalf of the Association and designating the signatories required;
8. making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By Laws;
9. enforcing by legal means the provisions of the Declaration, these By Laws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;
10. obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
11. paying the cost of all services rendered to the Association;
12. keeping books with detailed accounts of the receipts and expenditures of the Association;
13. making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By Laws, rules and all other books, records, and financial statements of the Association, as provided in Section 6.4;

14. permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and
15. indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required under Georgia law, the Articles of Incorporation or the Declaration.

3.19. Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Section 3.18(a), 3.18(b), 3.18(f), 3.18(g) and 3.18(i). The Declarant or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.20. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

1. accrual accounting, as defined by generally accepted accounting principles, shall be employed;
2. accounting and controls should conform to generally accepted accounting principles;
3. cash accounts of the Association shall not be commingled with any other accounts;
4. no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
5. any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
6. commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:
  1. an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
  2. a statement reflecting all cash receipts and disbursements for the preceding period;
  3. a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
  4. a balance sheet as of the last day of the preceding period; and
  5. a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and
7. an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis by an independent public accountant, as the Board determines; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

3.21. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided for Special Assessments in Section 8.5 of the Declaration if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12 month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

3.22. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of directors of the Association.

3.23. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an owner's right to vote for violation of any duty imposed under the Declaration, these By Laws, or any Association rules. In Addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Declaration, By Laws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the fine shall be assessed against the Unit and the Owner thereof upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By Laws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

1. Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10 day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.
2. Hearing. If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Covenants Committee, if one has been established, or if none, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.
3. Appeal. Following hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, a written notice of appeal

must be received by the manager, President, or Secretary of the Association within 10 days after the hearing date.

4. **Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provisions of the Declaration, these By Laws, or the rules of the Association by self help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XIV of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self help shall not be deemed as trespass.

## **Article IV**

### **Officers**

- 4.1. **Officers.** The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.
- 4.2. **Election and Term of Office.** The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.
- 4.3. **Removal and Vacancies.** The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.
- 4.4. **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.
- 4.5. **Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the 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.
- 4.6. **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.
- 4.7. **Compensation.** Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

## Article V

### Committees

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to the Declaration, these By Laws and, specifically, Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these ByLaws, and resolutions the Board may adopt , the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.23 of these By Laws.

## Article VI

### Miscellaneous

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by the Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, or these By Laws.

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

6.4. Books and Records.

1. Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, ByLaws, and Articles or Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.
2. Rules for Inspection. The Board shall establish reasonable rules with respect to:
  1. notice to be given to the custodian of the records;
  2. hours and days of the week when such an inspection may be made; and
  3. payment of the cost of reproducing copies of documents requested.
3. Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these ByLaws, all notices, demands, bills, statements, and other communications 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 United States mail, first class postage prepaid:

1. 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 address of the Unit of such Member; or
2. if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. Amendment.

1. By Class "B" Member. Until conveyance of the first Unit to a Person other than a Builder, the Class "B" Member may unilaterally amend these By Laws. Thereafter, the Class "B" Member may amend these By Laws if such amendment is specifically required to enable the U. S. Department of Veterans Affairs ("VA"), the U. S. Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association, or the Federal Home Loan Mortgage corporation to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Class "B" Membership exists, the Class "B" Member may unilaterally amend these By Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member. So long as the Class "B" Membership exists, and VA is guaranteeing or HUD is insuring a Mortgage on any Unit within the Properties, VA and HUD shall have the right to veto any amendment to these By Laws.
2. By Members General. Except as provided above, these By Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 67% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. If a meeting is called for the purpose of considering a proposed amendment hereunder, such meeting shall be called in accordance with Section 2.5. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.
3. Validity and Effective Date of Amendments. Amendments to these ByLaws shall become effective upon recordation in the Public Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By Laws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of the Millpond Manor Community Association, Inc., a Georgia corporation;

That the foregoing By Laws constitute the original By Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 13th day of February, 1996.

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the seal of said Association this 13th day of February, 1996.

(Signed)  
Patsy H. Andrews  
Secretary