

HAMILTON MILL COMMUNITY ASSOCIATION

COVENANTS, CONDITIONS AND RESTRICTIONS

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
HAMILTON MILL

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 3rd day of February, 1995 by SMG Development Associates, L.P., a Georgia limited partnership (the "Declarant").

Declarant desires to subject the real property described in Exhibit "A," which is attached and incorporated by reference to the terms of this Declaration. Declarant is the owner of such property, or if not the owner, has the written consent of the owner to subject such property. This Declaration 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.

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 real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

Article I
DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration 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 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 Hamilton Mill Community Association, Inc., as filed with the Secretary of State for the State of Georgia.

1.3. "Association": Hamilton Mill Community Association, Inc., a Georgia nonprofit 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 or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.6. **"By-Laws"** The By-laws of Hamilton Mill Community Association, Inc., attached as Exhibit "E," as they may be amended.

1.7. **"Class 'B' Control Period"**: The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.2 of the By-Laws.

1.8. **"Common Area"**: All real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the *common* use and enjoyment of the Owners.

1.9. **"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, 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' Control Period 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.

1.10. **"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

1.11. **"Covenant to Share Costs"**: Any agreement or contract between the Association and an owner or operator of property adjacent to the Properties for the allocation of expenses that benefit both the Association and the owner or operator of such property.

1.12. **"Declarant"**: SMG Development Associates, L.P., a Georgia limited partnership, 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 of legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

1.13. **"Design Guidelines"**: The architectural guidelines and procedures adopted by the New Construction Committee pursuant to Article IX and applicable to all Units within the Properties.

1.14. **"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.

1.15. **"Master Plan"**: The land use plan for the development of the Hamilton Mill community prepared by Reece, Hoopes & Fincher of Atlanta, Georgia, dated March 11, 1993, 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" which Declarant may from time to time anticipate subjecting to this Declaration. 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.

1.16. **"Member"**: A Person entitled to membership in the Association.

1.17. "Mortgage": A mortgage, a deed of trust, a deed t) secure debt, or any *other* form of security instrument affecting tide to any Unit.

1.18. "Mortgagee": A beneficiary or holder of a Mortgage

1.19. "Mortgagor" Any Person who gives a Mortgage.

1.20. "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.

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

1.22. "Private Amenity" Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than t h e Association for recreational and related purposes, on a daily fee, club membership basis or otherwise, and shall include, without limitation, the golf course, which is so located and all related and supporting facilities and improvements.

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

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

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

1.26. "Supplemental Declaration,": An instrument filed in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land. described in such instrument

1.27. "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 an attached or detached residence for a single family. The term shall refer to the land which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the p u b l i c . .

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above, and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

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 suspend the right of an Owner to use recreational 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 3.22 of the By-Laws;
- (e) . The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to such approval requirements as may be set forth in this Declaration;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission or other fees for the use of any recreational facility situated upon the Common
- . (g) The right of the Board to permit use of any recreational 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 .
- (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, subject to the approval requirements set forth in Section 12.2.

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 Properties or such portion thereof have been removed from the provisions of this Declaration. This Section 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. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to

disbursement of any condemnation award or proceeds from such conveyance. Such awards or proceeds shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking or conveyance 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" or "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 or conveyance 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 may adopt. 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 co-Owners 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, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of owners. The membership rights of an Owner which is a corporation, partnership or other legal entity 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, however, there shall be only one vote per Unit, and no vote shall be exercised for any property which is exempt from assessment under Section 8.11.

(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 and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Section 3.2 of the By-Laws.

The Class "B" membership shall terminate and become converted to Class "A" membership upon The earlier of

- (i) the expiration of the Class "B" Control Period pursuant to Article III of the By-Laws;
- or
- (ii) when, in his discretion, the Declarant so determines and declares in a recorded instrument.

(c) Exercise of Voting Rights . Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" member shall be exercised by that Member. If there is more than one Owner of a particular Unit, the vote for each Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

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, the By-Laws and consistent with the Community-Wide Standard.

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 or its designees may convey to the Association improved or unimproved 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. Upon written request of Declarant, the Association shall reconvey to Declarant, at no cost to Declarant, any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

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 facilities within the Common Area. In addition, in accordance with Section 3.22 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 from the violating Owner.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit Gwinnett County to enforce ordinances on 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 by 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 or by law, all rights and power 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 fire, police, water, sewer, and other utility facilities, parks, and other 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 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.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made 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 Gwinnett County, Georgia, or to any other local, state, or federal governmental entity, subject to such approval as may be required by Article XII.

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 anyway 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 of 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 can not be compromised or circumvented, nor that any such system 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 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. Utility Lines. Each Owner, occupant, guest, and invitees acknowledges that neither the Association, the Board nor Declarant shall in any way be considered insurers or guarantors of health within the Properties and neither the Association, the Board, nor Declarant shall be held liable for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or Utility substations adjacent to, near, over, or on the properties. Each Owner, occupant, guest, and Invitee assumes all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility substations and further acknowledges that neither the Declarant nor the Association have made any representations or warranties, nor has any Owner, occupant, guest, or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

Article V **MAINTENANCE**

5.1. Association's Responsibilities

(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, lakes; entry features, fences, bridges, sidewalks, swimming pools, recreational centers, playing field(s), playground(s), tennis courts, bike and pedestrian pathways/trails, street lights, park benches, and gazebos situated upon the Common Area;
- (iii) such portions of the Landscape Easement areas identified in Section 11.6 which the Board, in its sole discretion, determines is the maintenance responsibility of the Association;
- (iv) all private streets in the Properties which provide access to two or more Units;
- (v) all lakes, ponds, streams and/or wetlands located within the Properties (excluding any such property owned by a Private Amenity), including any retaining walls, bulkheads or dams. (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and
- (vi) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, Covenant to Share Costs, 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, public sidewalks, storm drainage facilities, and other 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) Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(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, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any covenant to share costs, other recorded covenants, or agreements with the owner(s) thereof. Notwithstanding the foregoing, the Board may, in its sole discretion, allocate the expense of maintenance, repair, and replacement of certain portions of the Area of Common Responsibility 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, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any agreement, Supplemental Declaration or other declaration of covenants applicable to such Unit. 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.

Each Owner of a Unit subject to the Landscape Easement referenced in Section 11.6 shall not remove any tree, shrub or similar vegetation from this area without prior approval pursuant to Section 9.2 hereof.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner 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. Nonresidential Properties: Covenant to Share Costs. Adjacent to or in the vicinity of the Properties there may be certain nonresidential areas, including, without limitation, Private Amenity, retail, commercial, or business areas, which are not subject to this Declaration and are neither Units nor Common Area as defined in this Declaration (hereinafter "nonresidential properties"). The owners of such nonresidential properties shall not be Members of the Association and shall not be entitled to vote, nor shall they be subject to assessment under Article VIII of this Declaration.

The owners of some or all of the nonresidential properties may enter into agreements with the Association which obligate the owners; of such nonresidential properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners of such nonresidential properties and the owners within the Properties or which obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such nonresidential properties, if

any, which are used by or benefit jointly the owners of such nonresidential properties and the owners within the Properties. The owners of such nonresidential properties shall be subject to assessment by the Association in accordance with the provisions of such agreement(s) The owners of the nonresidential properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein. .

5.5. Ply 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, if any, and on 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. 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 policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;**

(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 1/6 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 test business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.**

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment.

(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 metropolitan Atlanta 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. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.22 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 benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

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

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance 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 owners' 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 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 Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage.

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, unless the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners hereunder, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Unit and the Owner thereof pursuant to Section 8.6.

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 of this Declaration.. Alternately, 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. Until all property described on Exhibit "B" has been subjected to this Declaration or December 31, 2010, whichever is earlier, Declarant may from *time, to time* 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 a Supplemental Declaration describing the property being annexed in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia. 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 real property other than that described on Exhibit "B," and after December 31, 2010, any property described on Exhibit "B," 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.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Office of the Clerk of the Superior Court of Gwinnett County; Georgia. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. 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 this Article 'VII for the purpose of removing any portion of the Properties then owned by the Declarant or its affiliates or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for *the* Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

7.4. Additional Covenants quad Easements. The Declarant racy unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the

Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property. If other than the Declarant. Any Supplemental Declaration annexing additional property may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property. Any Supplemental Declaration may be amended in accordance with its terms and any such amendment shall not require compliance with Section 15.2 of this Declaration.

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 VII ASSESSMENTS

8.1. Creation of Assessments. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, and under the Articles and the By-Laws. There shall be three types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Units; (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.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Georgia law) computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's 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 attorney's 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 foreclosure or power of sale as 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. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. 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" Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold Units, 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. 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" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.3. Computation of General Assessment. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the 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.

The General Assessment shall be levied equally against all Units subject to assessments. The General Assessment 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 level

of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 8.8 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article VII, 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 Declarant under Section 8.2), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and 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 budget and notice of the amount of the General Assessment for the coming 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 holding at least 75% of the total Class "A" votes in The Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the: current year.

8.4. Budget Reserve and Capital Contribution The Board shall annually prepare reserve budgets which take 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. Special Assessments may be levied by the Board without the approval of Members, provided such Special Assessments in the aggregate for the fiscal year do not exceed the General Assessment then in effect. Special Assessments exceeding said amount shall require the affirmative vote, or written consent of Owners representing at least 67 % of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be levied equally against the entire membership, if such Special Assessment is for Common Expenses. 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.

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, janitorial service, 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;

(b) to cover costs, including overhead and administrative costs, incurred by the Association to provide maintenance of Landscape Easement areas as provided in Section 5.1(c); and .

(c) 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 3.22, before levying in 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 Mortgage(s) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial foreclosure.

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 equal 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 Common Expenses and costs 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 assessments 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 in which the Unit is conveyed to an Owner other than Declarant or 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, assessments shall not commence on any unoccupied 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 made, at which time the Association may retroactively assess any shortfalls in collections..

8.10 Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to 1/6 of the annual General Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-laws.

8.11. Exempt Property. The following property shall be exempt from payment of General Assessments and Special 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 appropriate committee under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3.

Any Owner may remodel, paint or redecorate the interior of his Unit without approval. However, modifications 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 NCC in its sole discretion.

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. Responsibility 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 two committees as described in subsections (a) and (b) below. The members of the committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

(a) **New Construction Committee.** The New Construction Committee (NCC) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the NCC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument: in recordable form executed by Declarant. Upon the expiration of such right, the Board may, at its option, either appoint the members of the NCC, who shall thereafter serve and may be removed in the Board's discretion, or combine the NCC and the MC (hereafter defined) into a single architectural review committee which shall assume all powers and responsibilities of both committees under this Declaration.

(b) **Modifications Committee** The Board of Directors may establish a Modifications Committee (MC) to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space. The NCC shall have the right to veto any action taken by the MC which the NCC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the NCC.

9.3. Guidelines and Procedures

(a) The Declarant shall prepare the initial Design Guidelines which shall apply to all construction activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

The NCC shall adapt 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 apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The NCC 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.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the :Design Guidelines and subject to review and approval or disapproval by *the* NCC.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the appropriate committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, and other features of proposed construction shall be submitted as applicable. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the appropriate committee 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 exiting structures and

(vi) plans for landscaping and grading.

In reviewing each submission, the committees 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.

In the event that the NCC or MC fails to approve or to disapprove 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 foregoing shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the NCC pursuant to Section 9.5.

Notwithstanding the above, the NCC by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

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 NCC 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) stop the NCC 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 neither the NCC nor the MC shall 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, any committee, 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.

9.7. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming: Upon written request from the Board or the Declarant. Owners shall, at their own cost and expense, remove such structure or improvement and restore the land 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 benefitted Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by the committee granting approval, 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 3.22 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 NCC and MC .

Article X

USE RESTRICTIONS AND RULES

10.1. Plan of Development: Applicability; Effect. Declarant has established a general Plan of . development for the Properties as a master planned community in order to enhance all Owners' 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 Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community. The Properties are subject to the land development, architectural, and design provisions described in Article IX, the other provisions of this Declaration governing individual conduct and uses of and 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 disapproved at a meeting by Members representing 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 "I3" 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.

10.3. Owners' Acknowledgement 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 of 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 Areas 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 Areas 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 my 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 Property.

(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, and in compliance with all rules in force at that time, 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, an Owner, occupant, or the Association.

11.2.. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant (so long as the Declarant owns any property described on Exhibit "A" or "B," of this Declaration), the Association, and the designees of each (which may include, without limitation, Gwinnett County, Georgia and any utility company), perpetual nonexclusive easements for the purpose of installing, repairing, maintaining, operating, replacing and removing cable television systems, master television antenna systems, security and similar systems, roads, walkways, pathways and trails, lakes; ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, storm drainage, telephone, gas, and electric facilities and appurtenances, over, on, across, under, and through the Properties, as well as an easement for access of vehicular and pedestrian traffic over, across and through the Properties, as necessary, to exercise the perpetual nonexclusive easements described above.

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

(b) There is hereby reserved to the Declarant, so long as, the Declarant owns any property described on Exhibit '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 properly described on Exhibit "A" or "B."

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) above shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not 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 Lake Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any lake, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved hereon for the benefit of Declarant, the Association, and their designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within twenty feet of lake beds, ponds, and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section. 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 or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

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 11.3, 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.

11.4. 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 construction of roads and 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 vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of my access roadway serving such Property.

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, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, 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. Landscape Easements and Tree Preservation. 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 street trees and landscaping over those portions of the Properties lying adjacent to public road rights-of-ways, including, without limitation, a strip of land 10 feet in width and running the entire length of, and on both sides of, the Hamilton Mill Parkway, 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 disturb existing landscaping within the Landscape Easement, 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 street trees 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 disturbed by any Owner without prior approval in accordance with Section 9.2.

11.7. Easement for Special Events. Declarant hereby reserves for itself, its successors, assigns and designees a perpetual, non-exclusive easement over the Common Area for the purpose of conducting educational, cultural, entertainment, or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.8. Easements for the Private Amenity.

(a) Every Unit and the Common Area are burdened with an easement permitting golf balls unintentionally to come upon such Units or Common Area and for golfers at reasonable times and in a reasonable manner to come upon the Common Area or the exterior portions of a Unit. to retrieve errant

golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers, of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for my damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant; the Association or its Members (in their capacity as such); the owner (s) of the Private Amenity or their successors, successors-in-title, or assigns; any successor Declarant; any Builder or contractor (in their capacities as such); any officer, director or partner of any of the forgoing, or any officer or director of any partner

(b) The owner(s) of the Private .Amenity, their respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably necessary to the operation, maintenance, repair and replacement of their respective Private Amenity.

(c) The Properties immediately adjacent to the Private Amenity are hereby burdened with a non-exclusive easement in favor of the adjacent Private Amenity for overspray of water from the irrigation system serving 'the. Private Amenity. Under no circumstances shall the Association or the owner(s) of the Private Amenity be held liable for damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner(s) of the Private Amenity, their respective successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Area lying reasonably within range of golf balls hit from any golf course within their respective Private Amenity.

(e) The Declarant hereby reserves for itself, its successors and assigns, and may assign to the owner(s) of the Private Amenity, an easement to draw water from the lakes and ponds within the Properties for purposes of irrigation of the Private Amenity and for access to and the right to enter upon the lakes and ponds within the Properties for installation and maintenance of any irrigation systems.

(f) Each Owner of a Unit adjacent to the Private Amenity hereby acknowledges the nature of the easements contained in this Section 11.8 and any nuisances incidental to the maintenance, operation, and use of, in particular, the golf course(s).

Article XI 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. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

12.5. 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.

12.6. 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.

12.7. 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 in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws. No

such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia.

The Declarant and Builders authorized by 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 such Units, including, but not limited to, business offices, signs, model units, 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 Properties 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 declaration of condominium 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 Office of the Superior Court of Gwinnett County, Georgia.

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" Control Period 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.

The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, as long as it owns any property described in Exhibit "A" or "B,," to establish separately developed residential neighborhoods ("Neighborhoods"), recreational, nonresidential, and amenity areas, or some, all or none of these, within the Properties, to designate portions of the Common Area for the exclusive use of one or more, but less than all, Neighborhoods ("Exclusive Common Areas") and to designate groups of Owners to vote on separate slates for the election of representatives to the Board. Every Unit situated within a designated Neighborhood may be subjected to additional covenants, conditions, easements, restrictions, and additional assessments for services provided to Units within such designated Neighborhood.. Neighborhood assessments to fund Association expenses for one or more, but less than all Neighborhoods if any, shall be subject to the lien provisions for General Assessments provided in Article VIII. Every Unit situated within a designated Neighborhood may be subjected to assessments for premiums for insurance on Exclusive Common Areas. The Declarant may impose such rights and relationships pertaining to any Private Amenity it may add to the community as it deems proper.

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 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, and to avoid the emotional and financial costs of litigation if at all possible. 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 a cause of action under the laws of the State of Georgia or federal law 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 arising out of any written contract between Owners, or between the Declarant and a Builder, which would constitute a cause of action under the laws of the State of Georgia in the absence of the Declaration, By-Laws and Articles of the Association; and

(e) any suit in which all parties are not Bound Parties.

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 Board.

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:

(i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

(ii) the basis of the Claim (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the Claim arises);

(iii) what Claimant wants Respondent to do or not do to resolve the Claim; and

(iv) 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.

(i) 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.

(ii) 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

(i) 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 Negotiations"), 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 such other independent agency in the metropolitan Atlanta, Georgia, area providing mediation services upon which the Parties may mutually agree.

(ii) 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.

(iii) 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.

(iv) 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.

(i) 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" of the Claim shall be deemed abandoned, and Respondent shall be released and discharged from 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. .

(ii) 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.

1.4.4. 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 143(c).

(1)) 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 resolve 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, attorney's fees and court costs.

**Article XV
GENERAL PROVISIONS**

1.5.1. Duration.

(a) Unless terminated as provided in Section 15.1(b), this Declaration shall have perpetual duration. If Georgia law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration

of such period for successive periods of 20 years each, unless terminated as provided herein. 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.

(b) Unless otherwise provided by Georgia law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by recording in the public records an instrument signed by Owners of at least 75% of the total Units within the Properties and by the Declarant, if the Declarant owns any portion of the Properties. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1:5.2. Amendment.

(a) **By Declarant** The Declarant may unilaterally amend this Declaration 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 or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase mortgage loans on the Units; (iv) to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements of any governmental agency., 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 Declarant still 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 or title to any Unit without the consent of the affected Owner.-

(b) **Owners.** 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 Members representing 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 the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable.

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.

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

(c) **Effective Date and Validity.** To be effective, any amendment must be recorded in the office of the Clerk of the Superior Court of Gwinnett County, Georgia.

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 so 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.

15.3. Severability. Invalidity 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 provision shall apply in addition to the provisions of Article XIV, if applicable.

15.5. Cumulative Effect: Conflict. The covenants, restrictions,, and 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 set forth in this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6. Use of the Words "Hamilton Mill". No Person shall use the words 'Hamilton Mill' or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the term "Hamilton Mill" in printed or promotional matter where such term is used solely to specify that particular property is located within Hamilton Mill, and the Association shall be entitled to use the words "Hamilton Mill" 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 rules of the Association. 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 obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Article XVI PRIVATE AMENITIES

16.1. General. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenity will be granted only to such persons, and on such terms and condition, as may be determined from time to time by the respective owners of the Private Amenities. The owner of the Private Amenity shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenity, including, without limitation,

eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members, if any.

16.2. Conveyance of Private Amenity All Persons, including all owners, are hereby advised that no representations or warranties have been or are made by the Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written, or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. Further, the ownership or operation of the Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

16.3. View Impairment Neither the Declarant, the Association, nor the owner of any Private Amenity, guarantees or represents that any view over and across the Private Amenity from Units adjacent to the Private Amenity will be preserved without impairment. Owners of the Private Amenity, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Private Amenity from time to time. In addition, the owner of any Private Amenity which includes a golf course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

16.4. Rights of Access and Parking There is hereby established for the benefit of the Private Amenity and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Private Amenity and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenity. Without limiting the generality of the foregoing, members of the Private Amenity and guests and invitees of the Private Amenity shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenity to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

16.5. Allocation of Costs In consideration of the fact that the Private Amenity will benefit from maintenance of the rights-of-way, and Common Areas within the Properties, the Association may enter into a contractual arrangement or covenant to share costs with any Private Amenity obligating the Private Amenity to contribute funds for, among other things, shared property or services and/or a higher level of Common Area maintenance.

16.6. Architectural Control. Neither the Association, nor any committee thereof, shall approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least 15 days' prior written notice of its intent to approve or permit the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have 15 days to approve or disapprove the proposal in writing delivered to the appropriate committee or association, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the 15-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area.

16.7. Limitations on Amendments In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity, may be made without the written approval of the Private Amenity. The foregoing shall not apply, however, to amendments made by the Declarant.

16.8. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Private Amenity shall cooperate to the maximum extent possible in the operation of the Properties and the Private Amenity. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate use restrictions or rules affecting activities on or use of the Private Amenity without the prior written consent of the owners of the Private Amenity affected thereby.

EXHIBIT "C"

Initial Use Restrictions

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, offices for any property manager retained by the Association, business offices for the Declarant or the Association, or any information center and/or sales office consistent with this Declaration and any Supplemental 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:

(a) Parking of any vehicles on public or private streets, thoroughfares, or any road which provides access to two or more Units within the Properties, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored or inoperable vehicles in places other than enclosed garages or other designated areas, if any; 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;

(b) 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 in 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. Pets 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;

(c) 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;

(d) 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;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units; .

(g) Outside burning of trash; leaves, debris or other materials, except during the normal course of constructing a dwelling or a unit.

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks,

(j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances or pollutant in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided

care is taken to minimize runoff, and Declarant may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Obstruction or rechanneling 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;

(m) 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 Office of the Clerk of the Superior Court of Gwinnett County, Georgia, except that the Declarant and Builders (subject to Declarant approval) shall be permitted to subdivide or replat Units which they own;

(n) Swimming, boating, use of personal flotation devices, or other active use of lakes or other bodies of water within the Properties, except that fishing from the bank shall be permitted with appropriate licenses and paddle boats shall be permitted on the lake; provided, paddle boats shall enter and exit the lake at points designated by the Board. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes or other bodies of water within or adjacent to the Properties;

(o) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(r) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activity[^]: 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;

(s) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties;

(t) Removal of trees except for diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons;

(u) 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 appropriate committee pursuant to Article IX; and

(v) Operation of motorized vehicles on pathways or trails maintained by the Association; and

(w) Erecting any sign of any kind within the Properties without the written consent of the NCC except for the following:

- (i) such signs as may be required by legal proceedings'
- (ii) not more than one "For Sale" sign of a size no larger than 24 inches in height and 30 inches in width; and not more than one professional security sign of such size deemed reasonable by the Board in its sole discretion.

Notwithstanding the above, the NCC reserves the right to restrict the color, lettering and placement of all signs. This provision shall not apply to entry, directional, or other signs installed by the Declarant.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is unlawful, noxious: dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(e) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, streams, ponds or other ground or surface waters within the Properties, except that Declarant, the Association and the Private Amenity shall have the right to draw water from such sources; and

(d) Any construction, erection, or placement of a thing, permanently or temporarily, on the *outside* portions of the Unit whether such portion is improved or unimproved, unless approved by the New Construction Committee or Modifications Committee as set forth in Article IX of the Declaration. This shall include, without limitation. basketball hoops,. swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; 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.

4. 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. The Board may require a minimum, lease term. 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 rules and regulations.

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 Associations Institute (or a similar independent agency), 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. complete.

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

12. There will be no post hearing 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
HAMILTON MILL COMMUNITY ASSOCIATION, INC.

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BYLAWS
OF
HAMILTON MILL COMMUNITY ASSOCIATION, INC.

Article I
Name, Principal Office, and Definitions

1.1. **Name.** The name of the Association shall be Hamilton Mill Community Association, Inc. (the "Association").

1.2. **Principal Office.** The principal office of the Association in the State of Georgia shall be located in Gwinnett County. 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 Hamilton Mill (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as 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", Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by 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 of as convenient thereto as 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 no later than -60 days after the close 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 of the Association if so directed by resolution of the Board or upon a Petition signed by Members representing at least 10% of the total Class "A" votes of the Association.

2.5. Notice of Meetings. The Secretary of the Association shall provide written notice stating the place, day and hour of any meeting of the Members, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten nor more than 60 days before the date of such meeting.

In the case of a special meeting or when 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 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 his address as it appears on the records of the Association; with postage thereon 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 any meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted 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, a majority of the Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not less than five nor more than 30 days from the time to original meeting was called. 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.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

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 to Member) by mail-in ballot, or by proxy, subject to the limitations of Georgia law. Each proxy shall be in writing, shall specify the Unit(s) for which it is given, and shall be 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. A proxy which fails to specify the Unit(s) for which it is given shall be presumed to cover all votes which the Member giving such proxy is entitled to cast. 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 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, 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, by mail-in ballot, or by proxy of Members representing 10% of the total vote of 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 meeting.

2.13. **Action without a Meeting.** Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if written consents setting forth the action so taken are signed by Members holding the voting power required to pass such action and such action is consented to by the Declarant if required. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.

2.14. **Action by Written Ballot.** Any action to be taken at any annual, regular or special meeting of Members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each Member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, shall state the percentage of approvals necessary to approve each matter other than election of directors, and shall specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board of Directors. The results of each action by written ballot shall be certified by the Secretary of the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

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 vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or Residents; provided, no Owner and Resident occupying 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. Directors during Class "B" Control Period. 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 until the first to occur of the following:

- (a) when 75% of the Units contemplated by the Master Plan for the property described on Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than the Declarant or Builders;
- (b) December 31, 2010; or
- (c) when, in its discretion, the Class "B" Member voluntarily relinquishes such control by a written instrument.

3.3. Number of Directors. The number of directors in the Association shall be not less than three nor more than seven, as provided in Section 3.5. The initial Board shall consist of three members and shall be appointed by the Class B" Member.

3.4. Nominations and Election Procedures.

(a) . **Nominations and Declarations of Candidacy.** Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by votes of Class "A" Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

Except with respect to directors selected by the Class "B" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members. The members of the Nominating Committee shall be appointed by the Board not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced at each annual meeting.

The Nominating Committee may make as many nominations. for election to the Board as it shall in its discretion determine. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) **Election Procedures.** Unless the Board establishes another procedure, all elections shall be held by written ballot as provided herein. The Secretary shall cause notice of the elections to be mailed or delivered to each Owner at least 10 days prior to the closing date established by the Board for filing of ballots. Such notice shall be accompanied by a written ballot listing all candidates for each vacancy who have qualified in accordance with the procedures described in subsection (a) above; and all candidates for each vacancy nominated by the Nominating Committee, if any. The notice shall specify the name and address to which the ballots should be returned and the date by which they must be received in order to be counted, which date shall be the "election date." On the election date, the Board or an election committee appointed by the Board shall open and count the ballots.

Each Owner may cast the entire *vote* assigned to his or her Unit for each position to be filled from the list of candidates on which such Owner is entitled to vote. 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. Notwithstanding any other provision contained herein:

(a) . Within 30 days after the time Class "A" Members, other than the Declarant or a Builder, own 1,250 Units, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The Association shall call a special meeting at which the Class "A" Members shall elect two of the five directors. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two years or until the happening of the event described in subsection (b) below, whichever is shorter. If such directors' term expire prior to the happening of the event described in subsection (b) below, successors shall be elected for a like term..

(b) At the fast annual meeting of the membership after the termination of the Class "B" Control Period, the Board shall be increased to seven directors, who shall be elected as follows: Four directors shall be elected for a term of two years and three directors shall be elected for a term of one year. At the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of two years.

3.6. Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by the vote of Class "A" Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice, prior to any meeting called for that purpose. A director who was elected solely by the votes of the Class "A" Members may be removed from office prior to the expiration of his or her term only by the votes of a majority of such Class "A" Members. Upon removal of a director, a successor shall then and there be elected by the Class "A" Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than 30 days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor. Any director appointed by the Board shall serve for the remainder of the term of such director.

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 shall be fixed by the Board.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, 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 the

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 shall be held when called by written notice signed by the President of the Association or by a majority of the 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 one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by 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) by telegram, charges prepaid. All such notices shall be given at the director's telephone 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 days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company 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 shall also 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. 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 of Directors. 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 who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date the original meeting was called. 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.

3.12. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class 'A' vote of the Association at a regular or special meeting of the Association; provided any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

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

3.14. Open Meetings. With the exception of meetings conducted pursuant to Sections 3.15 and 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 of Directors and reconvene in executive session, excluding Members, to discuss matters of a sensitive nature.

3.15. 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.

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

C. Powers and Duties.

3.17. Powers. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not directed by the Declaration, Articles, or these By-Laws to be done and exercised exclusively by the Members generally.

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

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following, in way of explanation, but not limitation:

- (a) preparation and adoption, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in advance on the first day of each fiscal Year;
- (c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and

for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it Shall approve, and using the proceeds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration,, and paying the premium cost thereof,

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association :and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(m) making available to any Owner of a Unit, any first Mortgagee, and the holders, insurers, and guarantors of a fine Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Unit and all other books, records, and financial statements of the Association,

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) cooperating with the parties subject to the Covenant to Share Costs and carry out the functions of the Association under same; and -

(p) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is permitted by Georgia law, the Articles, or the Declaration.

3. 18. Management. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant or an affiliate of the

Declarant may be employed as managing agent or Manager. The term of any management agreement shall be subject to termination by either party, without cause and without penalty, upon 90 days written notice.

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

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted *accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) 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;
- (e) 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 of Directors;
- (f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:
 - (i) an income statement reflecting all income and expense activity for the priming period on an accrual basis;
 - (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
 - (iii) a variance, report, reflecting the status of all accounts in an 'actual' versus 'approved' budget format;
 - (iv) a balance sheet as of the last day of the preceding period; and
 - (v) 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 resolution of the Board of Directors); and
- (g) an annual report consisting of at least the following shall be distributed 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. The annual report referred to above shall be prepared on an audited, reviewed or compiled basis as determined by the Board; 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.

3.20. **Borrowing.** The Association, acting through the Board of Directors, shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Area of Common Responsibility without the approval of the Members of the Association. The Board shall also have the power to borrow money. for other purposes; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed 5% of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the Articles of Incorporation, during the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the Members other than the Declarant.

3.21. **Rights of the Association.** With respect to the Area of Common Responsibility, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of a majority of the total number of directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the Class "B" Control Period unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than 90 days notice to the other party.

3.22. **Enforcement.** The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the responsible Owner, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule or regulation 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 Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) **Notice.** Prior to imposition of any sanction hereunder, 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 to the Covenants Committee, if any, or Board for a hearing; 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.

(b) **Hearing.** If a hearing is requested within the allotted ten day period, the hearing shall be held in executive session affording the alleged violator 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 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. The Board or the 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.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 30 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) 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.

Article IV Officers

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the 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 the authority and perform the duties prescribed from time to time by the Board.

4.2. Election, Term of Office and Vacancies. The officers of the Association shall be elected annually by the Board at the first meeting of the Board of Directors following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.3. Removal. Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby.

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 from time to time specifically be conferred or imposed by the Board. 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, 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 unless otherwise determined by resolution of the Board.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12. -

Article V **Committees**

5.1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board. Committee members need not be Board Members except to the extent required under Georgia law.

5.2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to 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 By-Laws, 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 3.22.

Article VI **Miscellaneous**

6.1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board. In the absence of a resolution, the fiscal year shall be the calendar year.

6.2. Parliamentary Rules. Except as may be modified by 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.**

(a) Inspection by Members and Mortgagees. The Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules and regulations of the Association,, the

membership register, books of account, and the minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, Member of the Association, or by 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 the Unit at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made;
- (iii) payment of the cost of reproducing copies of documents requested.

(c) 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 extracts and a copy of relevant documents at the expense of the Association.

6.5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

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

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. Amendment.

(a) By Declarant. The Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure 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 it still owns property described in Exhibits "A" or "B" of the Declaration for development as part of the Properties, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

As long as there is a Class "B" membership, and the Federal Housing Administration ("FHA") or the U.S. Department of Veterans Affairs ("VA") is insuring or guaranteeing the mortgage on any Unit, FHA and/or VA may veto any proposed amendments to these By-Laws.

(b) By Owners. Except as otherwise, specifically provided herein, these By-Laws 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 Class "B" Member, so long as such membership exists. In addition, the approval requirements set forth in Article XII of the Declaration shall be met, if applicable. 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. Any amendment to be effective must be recorded in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia.

If an Owner consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Owner has the authority so 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.

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

CERTIFICATION

I, the undersigned, do hereby certify:

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

**Exhibit E
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**AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR HAMILTON MILL**

THIS AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS FOR HAMILTON MILL (the "Amendment") is made this 31st day of October, 2000 by SMG DEVELOPMENT ASSOCIATES L.P., a Georgia limited partnership (the "Declarant");

WITNESSETH

WHEREAS, Declarant filed that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hamilton Mill dated February 3, 1995, which was recorded in Deed Book 11132, Page 222, et seq in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia, as heretofore amended and supplemented (the "Declaration"); and

WHEREAS, pursuant to the terms of Section 15.2(a) of the Declaration, the Declarant may unilaterally amend the Declaration so long as it still owns any portion of the property described in Exhibits 'A' or 'B' to the Declaration for development as part of the Properties, provided the amendment has no material adverse effect upon any right of any Owner or title to any Unit, without the consent of the affected Owner; and -

WHEREAS, Declarant still owns a portion of the property described in Exhibits 'A' and 'B' to the Declaration for development as part of the Properties; and

WHEREAS, the Declarant desires to amend the Declaration in a manner which has no material adverse effect upon any right of any Owner or title to any Unit; and

WHEREAS, the Declaration contemplates that adjacent to, in the vicinity of, or within the property subject to the Declaration one or more recreational facilities may be developed which shall be privately owned and operated by persons or entities and which are referred to as a "Private Amenity" in the Declaration; and

WHEREAS, Declarant has developed a golf course (the "Golf Course") currently known as Hamilton Mill Golf Course on those certain tracts or parcels of land lying and being in Duncan 1749 GMD, Gwinnett County, Georgia, being more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference (the "Golf Course Parcels"); and

WHEREAS, pursuant to (inter alia) Article XI of the Master Declaration, Declarant reserved certain general rights and easements over the Properties for the mutually beneficial use, development and enjoyment of all Units within the Properties and for the Private Amenity, including, without limitation, easements for encroachments, general utilities, access, lake maintenance, floodwater, roadways, landscaping, irrigation, golf play, and the like, all as more particularly set forth in the Declaration; and

WHEREAS, pursuant to the rights and easements reserved in the Declaration, Declarant desires to identify the Golf Course Parcels as a Private Amenity benefited by certain rights and easements reserved under the Declaration; and

WHEREAS, Declarant further desires to amend the Declaration to provide that, with respect to the Golf Course, all Members and Owners of a Unit shall have the right to play golf at the Golf Course on a daily fee basis.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration as follows:

Note: This is not a legal copy of the Hamilton Mill Community Association Covenants.

1. **Defined Terms** Whenever defined terms and words of art are used in this First Amendment, but are not defined herein, such terms and words of art shall have the meanings ascribed thereto in the Declaration. All defined terms herein are hereby incorporated into the Declaration.

2. **Private Amenity.** Declarant hereby declares that the Golf Course Parcels are the Golf course as referred to in the Declaration and do and shall constitute a Private Amenity under the Declaration. Pursuant to (i) that certain Declaration of Easements and (ii) that certain Mulberry Lake Water Withdrawal and Easement Agreement, each of which are dated of even date herewith and have been executed and delivered by Declarant and are to be recorded in the records of the Clerk of the Superior Court of Gwinnett County, Georgia, Declarant shall grant to the owner of the Golf Course Parcels certain non-exclusive easements and rights for the benefit of the Private Amenity which Declarant reserved and created under the Declaration, it being expressly acknowledged and agreed that Declarant continues to hold such non-exclusive rights and easements so reserved in the Declaration for the benefit of any additional Private Amenity (including any additional golf course) which may now or hereafter exist as contemplated in the Declaration. Nothing contained herein shall be deemed to submit the Golf Course Parcels to the Declaration or be deemed to include the Golf Course Parcels within the Properties.

3. **Amendment to Article XVI. Section 16.1.** Article XVI, Section 16.1 of the Declaration is hereby amended by adding the following sentence to the end of the section:

"Notwithstanding any other provision contained in this Section 16.1 or otherwise in this Declaration to the contrary, notwithstanding if the owner(s) of the Golf Course Parcels convert the Golf Course operated thereon to an 'equity' club or semi-private club, all Members and owners of Units shall have the right to play golf on the Golf Course Parcels on a daily fee basis, subject to such terms and conditions, including the payment of greens fees and cart rentals, as established from time to time at the sole and absolute discretion of the owner(s) of the Golf Course Parcels".

4. **Substitution of Article XVI. Section 16.2.** Article XVI, Section 16.2 of the Declaration is hereby amended by deleting Section 16.2 of the Declaration and substituting in lieu thereof the following
Section 16.2:

"16.2. Conveyance of Private Amenity, All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. Further, the ownership or operation of the Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) subject to the provisions of Section 16.1 above, the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance"

5. **Deletion of Section 16.6 of Article XVI.** Article XVI of the Declaration is hereby amended by deleting Section 16.6 thereof.

6. **Substitution of Article XVI. Section 16.7.** Article XVI, Section 16.7 of the Declaration is hereby amended by deleting Section 16.7 of the Declaration and substituting in lieu thereof the following section 16.7:

'16.7 Limitation on Amendments: In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity may be made without the written approval of the owner(s) of the Private Amenity."

7. Future Rights of Declarant Declarant acknowledges and agrees that, upon the conveyance of the Golf Course Parcels, Declarant shall no longer have the right to submit the Golf Course Parcels to the Declaration and shall no longer have the right to grant easements over the Golf Course Parcels pursuant to 11.2(b) of the Declaration or otherwise.

8. Ratification. As expressly modified and amended herein, the Declaration is and shall remain in full force and effect and, as modified and amended herein, it is expressly ratified and confirmed by the Declarant. All terms and conditions of the Declaration not specifically addressed in this Amendment shall remain in full force and effect and shall be unchanged by this Amendment.

9. Binding Effect. The terms and provisions of this Amendment shall be binding upon and shall inure to the benefit of the Declarant and its respective heirs, administrators, executors, legal representatives, successors and assigns. This Amendment shall be governed by and construed in accordance with the laws of the State of Georgia.