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JACKSON COUNTY GA

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STATE OF GEORGIA  
COUNTY OF JACKSON

Cross-Reference to:  
Deed Book 47-O, Pg. 354

**AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR SEASONS AT PENDERGRASS**

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR SEASONS AT PENDERGRASS ("Amended and Restated Declaration") is made this 7<sup>th</sup> day of March, 2013, by the undersigned Owners and by SCBT d/b/a CBT, a Division of SCBT f/k/a SCBT, N.A. d/b/a CBT, a Division of SCBT, N.A., a South Carolina corporation authorized to transact business in Georgia ("SCBT" or the "Declarant"), as successor to the rights and status of "Declarant."

**RECITALS**

WHEREAS, on February 15, 2007, REL Development, Inc. executed that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Seasons at Pendergrass, which was filed and recorded on February 16, 2007 in Deed Book 47-O, Page 354, *et seq.*, in the office of the Clerk of the Superior Court for Jackson County, Georgia (the "Declaration"), naming itself, its successors and assigns as "Declarant" thereunder; and

WHEREAS, on August 2, 2011, SCBT, N.A. d/b/a CBT, a Division of SCBT, N.A., acting as attorney-in-fact for REL Development, Inc., executed a Deed Under Power of Sale which was recorded August 11, 2011 in Deed Book 60-U, Page 37, *et seq.*, in the office of the Clerk of the Superior Court of Jackson County, Georgia, conveying to SCBT all right, title, equity and interest of REL Development, Inc. in and to certain property which is described in Exhibits "A" and "B" of the Declaration; and

WHEREAS, effective as of August 11, 2011, REL Development, Inc. transferred to SCBT all of its right, title and interest in and to the rights and status of the "Declarant" under the Declaration by that certain Assignment and Assumption of Declarant Rights and Status Under Declaration of Protective Covenants, Conditions, Restrictions and Easements for Seasons at

Pendergrass, recorded in Deed Book 647, Page 13-15, *et seq.*, in the office of the Clerk of the Superior Court of Jackson County, Georgia; and

WHEREAS, Article 3, Section 3.1 of the Declaration provides that the Owners of Lots subject to the Declaration shall be members of the "Association," which is identified in Article 1 of the Declaration as "Seasons at Pendergrass Homeowners Association, Inc.," the bylaws of which were attached as Exhibit "C" to the Declaration; and

WHEREAS, Seasons at Pendergrass Homeowners Association, Inc. has been administratively dissolved by the Secretary of State of the State of Georgia; and

WHEREAS, the undersigned Owners and SCBT, as successor to the rights and status of "Declarant," desire to amend and restate the Declaration to designate SCBT as a successor "Declarant" thereunder, to substitute a new nonprofit entity incorporated as "Seasons at Pendergrass Community Association, Inc." as the homeowners association thereunder, to replace the bylaws attached as Exhibit "C" to the Declaration with the bylaws of the new entity, and to make various other changes to facilitate the expansion, development, marketing, and sale of property in the residential development known as Seasons at Pendergrass (the "Community");

WHEREAS, Article 11, Section 11.6 of the Declaration provides for amendment of the Declaration upon the affirmative vote, written consent, or any combination thereof, of Owners of at least two-third (2/3) of the Lots and the written consent of the Declarant; and

WHEREAS, the undersigned Owner(s), being the Owner(s) of at least two-third (2/3) of the Lots subject to the Declaration, have executed the attached Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions and Easements for Seasons at Pendergrass ("Amended and Restated Declaration"), or a written consent attached thereto, to evidence their consent to the amendment and restatement of the Declaration as set forth therein and the substitution of Seasons at Pendergrass Community Association, Inc. as the Association referenced therein; and

WHEREAS, SCBT, as successor to the rights and status of Declarant, has executed this the attached Amended and Restated Declaration to evidence the Declarant's consent to the amendment and restatement of the Declaration as set forth therein and the substitution of Seasons at Pendergrass Community Association, Inc. as the Association referenced therein;

NOW, THEREFORE, the Declaration is hereby amended and restated by striking the Declaration (including all exhibits thereto) in its entirety and substituting in its place the attached Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions and Easements for Seasons at Pendergrass and the exhibits attached thereto, including as Exhibit "C" the Bylaws of Seasons at Pendergrass Community Association, Inc., which are hereby adopted and/or ratified as the official bylaws of Seasons at Pendergrass Community Association, Inc. ("Bylaws"), such Amended and Restated Declaration and Bylaws to read as follows:

[continued on next page]

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**AMENDED AND RESTATED**  
**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,**  
**RESTRICTIONS AND EASEMENTS**  
**FOR**  
**SEASONS AT PENDERGRASS**

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THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION BUT DOES NOT SUBMIT THIS DEVELOPMENT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, *ET SEQ.*

**AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
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**AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
SEASONS AT PENDERGRASS**

THIS AMENDED AND RESTATED DECLARATION ("Declaration") is made on the date hereinafter set forth by SCBT d/b/a CBT, a Division of SCBT f/k/a as SCBT, N.A., d/b/a CBT, a Division of SCBT, N.A., a South Carolina corporation authorized to transact business in Georgia ("SCBT"), as successor to the rights and interest of REL DEVELOPMENT, INC., a Georgia corporation, as Declarant (SCBT being hereinafter sometimes called "**Declarant**"), and by the undersigned Owners.

WITNESSETH

WHEREAS, the real property described on Exhibit "A" attached hereto constitutes the initial phases of a planned residential community located in Jackson County, Georgia and known as "Seasons at Pendergrass"; and

WHEREAS, this Declaration is intended to provide a general plan of improvement for Seasons at Pendergrass and to establish a flexible and reasonable procedure for the overall development, expansion, administration, maintenance, preservation, use and enjoyment of the property described in Exhibit "A" and any additional property which is hereafter submitted to the terms of this Declaration as provided herein; and

WHEREAS, as an integral part of such plan, Seasons at Pendergrass Community Association, Inc., a Georgia nonprofit corporation whose membership consists of the owners of "Lots," as defined herein, has been established to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined) , to own, operate and/or maintain various common areas and community improvements for the benefit of the Owners, and to administer and enforce this Declaration and other governing documents referenced herein;

NOW, THEREFORE, the real property described in Exhibit "A" attached hereto and by this reference incorporated herein, together with such additional property as is hereafter submitted to the terms of this Declaration by amendment or Supplementary Declaration as described herein (collectively, the "Community"), is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

**Article 1**  
**Definitions**

The following words, when capitalized and used in this Declaration, the Bylaws, or in any amendment or Supplementary Declaration, shall have the following meanings:

(a) "Articles of Incorporation" means the Articles of Incorporation of Seasons at Pendergrass Community Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

(b) "Association" means Seasons at Pendergrass Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

(c) "Board of Directors" or "Board" means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. § 14-3-101, *et seq.*

(d) "Builder" means a licensed contractor engaged in the business of constructing homes for resale who acquires one or more Lots for the purpose of constructing a dwelling and related improvements thereon for resale in the ordinary course of such business, or who purchases parcels of land within the Community for further subdivision, development and/or resale in the ordinary course of such Person's business.

(e) "Bylaws" means the Bylaws of Seasons at Pendergrass Community Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

(f) "Common Property" means any and all real and personal property, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(g) "Community" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as are made from time to time by Supplementary Declaration as provided herein.

(h) "Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association or the Architectural Review Committee, as the case may be. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(i) "Declarant" means, as to the period prior to August 2, 2011, REL DEVELOPMENT, INC., a Georgia corporation, and thereafter SCBT d/b/a CBT, a Division of SCBT f/k/a SCBT, N.A. d/b/a CBT, a Division of SCBT, N.A., a South Carolina corporation authorized to transact business in Georgia, and its successors, successors-in title or assigns taking title to any portion of the property described in Exhibit "A" or Exhibit "B" hereof for the purpose

of development and/or sale and designated as Declarant in a recorded instrument by the then holder of rights of Declarant hereunder. Any or all of the rights of Declarant set forth in this Declaration or the Articles of Incorporation or the Bylaws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration, the Articles of Incorporation or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and recorded in the public real estate records of the county where the property is located. No Person shall be liable for any acts, omissions, or obligations of the Declarant for any period prior to such Person being designated the Declarant hereunder unless, and then only to the extent that, such Person expressly assumes such liability.

(j) "Lot" means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute a single-family dwelling site as shown on a plat recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with the title to each Lot as an appurtenance thereto, whether or not separately described, all of the rights and interest of an Owner in the Common Property, as herein provided, together with membership in the Association. The term "Lot" shall also include any parcel of land within the Community which is designated for "future development" on a recorded plat, or which has not been depicted as part of a larger tract on a recorded subdivision plat, such parcel being treated as a single Lot until such time as a subdivision plat is recorded subdividing all or a portion of such parcel. Thereafter, the portion encompassed by such plat shall contain the number of Lots indicated on such plat and the remaining portion, if any, shall continue to be treated as a single Lot.

Lots may be combined or further subdivided, and boundary lines of Lots may be changed, only by recording of a plat or other legal instrument, subject to such approvals as may be required under this Declaration and applicable law. In the absence of recording such a legal instrument, ownership of adjacent Lots by the same Owner shall not permit such Lots to be treated as a single Lot for purposes of voting and assessment, notwithstanding that such Lots may be improved with a single dwelling.

(k) "Mortgage" means any and all instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

(l) "Mortgagee" means the holder of a Mortgage.

(m) "Occupant" means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(n) "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation. For purposes of this Declaration, the Bylaws and any other documents referenced herein, the Declarant shall be deemed to own, and to be the "Owner" of, any Lot or other property described on Exhibits "A" or "B" so long as it holds at least a 5% percent undivided interest in such Lot or other property.

(o) "Person" includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization recognized as a separate legal entity under Georgia law.

(p) "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

(q) "Total Association Vote" means the votes attributable to the entire membership of the Association (including votes of Declarant) as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast.

## **Article 2**

### **Property Subject To This Declaration**

#### **2.1 Property Hereby Subjected To This Declaration.**

The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is the real property described in Exhibit "A" attached hereto and by this reference made a part hereof.

#### **2.2 Unilateral Annexation By Declarant.**

As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of Superior Court of Jackson County, Georgia a Supplementary Declaration describing the property being subjected. Declarant intends to annex hereto the property contained in Declarant's land plan for the development, as amended from time to time, which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict

the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3 Other Annexation.

Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Jackson County, Georgia land records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

2.4 Withdrawal of Property.

Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant 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 Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Any such withdrawal shall be accomplished by the filing for record of an amendment to this Declaration describing the property removed and shall be effective upon filing for record in the Office of the Clerk of Superior Court of Jackson County, Georgia unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Person.

**Article 3**

**Association Membership and Voting Rights**

3.1 Membership.

Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the spouse of a member, but in no event shall more than one office be held for each Lot owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.

### 3.2. Voting.

Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Lot shall be suspended in the event more than one Person seeks to exercise it. The Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Lot of the Owner remains unpaid; and for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations. If a Lot is owned by a legal entity, the vote for such Lot may be exercised at a meeting only by an officer, partner, manager, or trustee having apparent authority to act on behalf of such entity, another individual designated in a written proxy which is signed, dated and filed with the Secretary prior to such vote, or by a written ballot or written consent executed by the duly authorized representative of the Owner. If a Lot is owned by more than one person or entity, the vote for such Lot may be exercised by any co-Owner holding at least a 5% undivided interest in the Lot; provided, the vote shall not be counted if more than one co-Owner seeks to exercise it.

### 3.3 Notice of Sale, Lease or Acquisition.

Prior to the sale or lease of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require. All Owners shall notify the Association of any change in name, address or telephone number.

## **Article 4** **Assessments**

### 4.1 Purpose of Assessments.

The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

### 4.2 Creation of the Lien and Personal Obligation for Assessments.

Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges in the amount of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due and interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this

Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot or nonuse of the Common Property, including, without limitation, the recreational amenity area serving the Community. No diminution of abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

#### 4.3 General Assessments.

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause the budget and the assessments to be levied against each Lot for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period of time, then and until such time as a budget has been determined, as provided herein, the budget in effect shall continue. General assessments shall be levied equally on all Lots subject to assessment under Section 4.8 and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance costs associated with the maintenance and operation of the storm water drainage facilities and storm water detention/retention ponds serving the Community, expenses incurred for the maintenance of the walking trails and bicycle trails, if any, electrical expenses for the Community street lights, costs associated with the maintenance and operation of the Community recreational facilities and expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of the rights and duties of the Association against Owners and others.

#### 4.4 Special Assessments.

The Association may levy a special assessment against all Owners in the Community for unanticipated and unbudgeted expenses if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

#### 4.5 Specific Assessments.

The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration the initiation fee and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

#### 4.6 Subordination of Liens to Mortgages.

The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Lot if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the Lot pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Lot of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Lot to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Lot of any personal obligation or relieve such Lot or the then Owner of such Lot from liability for any assessment authorized hereunder that becomes due after such sale and transfer.

#### 4.7 Remedies of the Association.

Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights granted herein, the personal obligation of the then Owner to pay

such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves.

Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in the amount of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due and interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of Jackson County, Georgia, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments.

Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against such Owner personally for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend, without further notice or hearing, the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and the right to receive and enjoy such services and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Lot in favor of the Association.

#### 4.8 Date of Commencement of Assessments.

Assessments shall commence when the Board of Directors first determines a budget and levies assessments. The obligation to pay assessments provided for herein shall commence as to a particular Lot on the first to occur of the following: (a) the date that the Lot is first occupied for residential purposes, or (b) the date the Lot is sold and conveyed by Declarant to an Owner who is not a Builder acquiring such Lot in the ordinary course of business or a successor Declarant. A Lot shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an Owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. Any Lot which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Lot is approved for use as a model home and is not occupied for residential purposes.

#### 4.9 Budget Deficits During Declarant Control.

For so long as the Declarant has the authority to appoint the directors and officers of the Association pursuant to the Bylaws, Declarant may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan. The Board is specifically authorized to borrow money from the Declarant and execute a loan agreement and/or promissory note evidencing the same, provided that if such borrowing occurs while the Declarant is entitled to appoint and remove the members of the Board pursuant to the Bylaws, the interest rate to be paid on the outstanding balance shall either be (a) fixed at a rate not to exceed the U.S. Prime Rate (as listed in the Eastern print edition of the Wall Street Journal®) in effect on the date such loan documents are executed or (b) floating, at a rate not to exceed the U. S. Prime Rate in effect from time to time during the period that there remains a balance outstanding.

#### 4.10 Failure to Assess.

The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to 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 assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

#### 4.11 Estoppel Letter.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.

#### 4.12 Initiation Fee.

Upon the sale of every Lot after it has been improved with a residence for which a certificate of occupancy has been issued, an initiation fee in the amount of Three Hundred and No/100 Dollars (\$300.00) shall be collected from the purchaser at the closing of such sale and disbursed to the Association; or if not collected at closing, then paid by the purchaser immediately upon demand by the Association. The initiation fee shall constitute a specific assessment against the Lot, shall be in addition to, not in lieu of, the annual general assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose which provides a direct benefit to the Community, as

defined in the rules of the Federal Housing Finance Agency published at 12 C.F.R. §1228.1, *et seq.*, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. This specific assessment shall not apply to the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the Owner acquiring the Lot improved with a residence from the foreclosing Mortgagee. In addition, no membership fee shall be levied or payable upon transfer of title to a Lot:

(i) by a co-Owner to any other co-Owner who acquired an ownership interest in the Lot at the same time as the transferring co-Owner;

(ii) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(iii) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of the grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership or beneficial interest in such entity, the membership fee shall become due;

(iv) to an institutional lender pursuant to a Mortgage or upon foreclosure or deed in lieu of foreclosure of such Mortgage; or

(v) under such other circumstances as the Board, in its discretion, deems to warrant classification as an exempt transfer.

## **Article 5** **Maintenance**

### **5.1 Association's Responsibility.**

The Association shall maintain and keep in good repair the Common Property. This maintenance obligation shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property) the following: (a) all Community entry features, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to such entry features regardless of whether said entry features are located on a Lot, private property or public- right-of-way; (b) all storm water detention/retention ponds and storm water drainage facilities serving the Community, whether or not such storm water detention/retention ponds and storm water drainage facilities are located on a Lot, privately owned property or public right-of-way, if and to the extent such facilities are not maintained on an ongoing basis by a governmental entity; provided however, each Owner of a Lot, and not the Association, shall be responsible for the maintenance of all storm water drainage facilities located on and used exclusively in connection with such Lot or the improvements thereon, including, for example, guttering, and pipes and drains for the transportation of storm water from such Lot into any storm water detention/retention ponds and storm water drainage facilities for the Community; (c) all Community green space and open space; (d) the walking trails and bicycle trails in the Community, if any; (e) any Jake or dam in the Community,

including any paved pathway located adjacent or appurtenant to such Lake; (f) the recreational facilities in the Community, if any; and (g) the landscaping located along John B. Brooks Road (80' ROW), including the irrigation provided to such landscaping, if and to the extent the same is not maintained by a local or governmental entity. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard and this Declaration.

#### 5.2 Owner's Responsibility.

Except for maintenance performed on a Lot by the Association pursuant to Section 5.1, if any, all maintenance of the Lot and all structures, landscaping, and other improvements located thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damages to improvements, including, without limitation, periodic painting and pressure washing as needed. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten day period, to commence such work which shall be completed within a reasonable amount of time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement to the Lot and all costs thereof shall be assessed against the Owner and the Lot as a specific assessment. This provision shall not apply to any Lot(s) owned by the Declarant, unless improved with a dwelling and occupied as a residence.

#### 5.3 Conveyance of Common Property by Declarant to Association; No Implied Rights.

The Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such

conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the benefit of its members. So long as Declarant owns any property primarily for development and/or sale in the Community or Declarant has the right unilaterally to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the Association to reconvey to Declarant the Common Property or any portion thereof, improved or unimproved, at no charge to Declarant, without a vote of the Owners/members of the Association, if the Common Property or any portion thereof is: (i) found by Declarant to have been conveyed in error, (ii) needed by Declarant to make adjustments in property boundary lines; or (iii) reasonably determined by Declarant to be needed by Declarant due to changes in the overall scheme of development for the Community. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any such conveyance to the Association. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant may impose or reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such imposition or reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant to the Association or the Owners, as the case may be, by an instrument recorded in the real estate records of the county where the property is located.

#### 5.4 Partition.

The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community.

#### 5.5 Condemnation.

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply

to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

#### 5.6 Liability.

Owners, Occupants and their guests shall use the common areas maintained by the Association and all other Common Property, including, without limitation the recreational facilities serving the Community, and all portions of the Community not contained within a Lot at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person occurring on the Common Property nor for loss or damage to personal belongings used or stored thereon or on any other portion of the Community. The Association shall not be liable for injury or damage to any Person or property: (a) caused by the elements or by an Owner or any other Person; (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Property; or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

### Article 6 Architectural Standards

#### 6.1 General.

No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community, unless installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot 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. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, any Builders approved by the Declarant, nor to improvements to the Common Property by or on behalf of the Association.

#### 6.2 Guidelines and Procedures.

Except as provided above, no exterior construction, addition or alteration shall be made less and until plans and specifications shall have been submitted in writing to and approved by

the Declarant. Such plans and specifications shall be of sufficient detail to allow the Declarant to make its review and to the extent required by the Declarant shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Declarant may adopt written design and development guidelines and application and review procedures, which may provide for a review fee. The Declarant shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the design and development guidelines, if any. The Declarant shall make the design and development guidelines, if any, available to Owners and bBuilders who seek to engage in construction upon all or any portion of the Community and such Owners and Builders shall conduct their operations strictly in accordance therewith. If the Declarant fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the Declarant, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Declarant shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations and it shall be entitled to stop any construction in violation of these restrictions. The Declarant and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to determine whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Declarant for reconsideration.

### 6.3 Limitation of Liability.

Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Declarant assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, nor the officers, directors, members, employees and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association or the officers, directors, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any Law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

#### 6.4 No Waiver.

The approval of the Declarant of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the Declarant, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters subsequently or additionally submitted for approval or consent.

#### 6.5 Variances.

Notwithstanding anything to the contrary contained herein, the Declarant shall be authorized to grant individual variances from any of the provisions of this Declaration and the design and development guidelines, if any, if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall: (a) be effective unless in writing; (b) be inconsistent with the overall scheme of development for the Community; or (c) prevent the Declarant from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### 6.6 Enforcement.

Any structure, improvement or landscaping improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, Owners shall, at their own cost and expense, remove such nonconforming 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 Declarant and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, reasonable attorney's fees actually incurred, may be assessed against the Lot 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 and development guidelines, if any, may be excluded by the Declarant from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, the Association nor the officers, directors, members, employees and agents of any of them, shall be held liable to any Person for exercising the rights granted by this paragraph, including claims for damages resulting from the removal of a nonconforming structure in accordance with the procedures set forth herein. In addition to any other remedies available to the Declarant, in the event of noncompliance with this Article, the Declarant may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Declarant shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

#### 6.7 Architectural Review Committee.

Until the Declarant's right to annex additional property under Section 2.2 has terminated and each Lot has been improved with a dwelling for which a certificate of occupancy has been issued, the Declarant shall have the sole right, power and authority under this Article. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant and recorded in the land records of the Clerk of the Superior Court of Jackson County, Georgia. Upon expiration or earlier surrender in writing of all or a portion of such right and authority, the Board of Directors shall appoint an Architectural Review Committee of the Association, which shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. The Declarant may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to the Architectural Review Committee while retaining control over all other building and construction in the Community. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the Architectural Review Committee while retaining all authority to review and approve new home construction. Any right, power or authority of the Declarant which may be relinquished to the Association prior to the termination of the rights of Declarant hereunder shall be by written recorded instrument only and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory Architectural Review Committee shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder. After the termination of all rights of Declarant hereunder, the Architectural Review Committee shall have all right, power and authority to review and approve building and construction activity within the Community hereunder and this Article shall then be read and interpreted as if any reference to the Declarant in this Article 6 were a reference to the Architectural Review Committee.

### **Article 7** **Use Restrictions and Rules**

#### 7.1 Rules and Regulations.

The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate, modify or delete reasonable rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarant.

#### 7.2 Residential Use.

Each Lot shall be used for residential purposes exclusively. Leasing of a Lot for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing at the Lot may conduct business activities within such residence so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the

insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. 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: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

### 7.3 Signs.

No sign of any kind shall be erected within the Community without the prior written consent of the Declarant or, after the termination of the rights of Declarant hereunder, the Architectural Review Committee. Security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to the Declarant, the Board of Directors or to any institutional Mortgagee in possession due to foreclosure of a Mortgage or as grantee pursuant to any deed in lieu of such foreclosure. The Board may impose a fine of One Hundred and Fifty and No/100 Dollars (\$150.00) per day for display of any sign in violation of this provision which is not removed within twenty-four hours after written demand is delivered to the Owner at that Lot. No Lot may have more than two (2) signs erected on it at one time.

### 7.4 Vehicles; Parking.

Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated parking areas established by the Board, if any. No on street parking shall be permitted. Parallel or angled parking shall be prohibited, except as may be permitted by the Board in the recreational amenity area or visitor parking area established by the Board, if any. All parking shall be subject to such reasonable rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, trailers, motorcycles, minibikes, trucks, campers, buses, vans and automobiles. The term "commercial vehicles" as used herein, shall include, without limitation, any vehicle which bears any indicia of commercial use, including, but not limited to, writing, logos, or which would not be primarily used for the transportation of passengers. The term "parking areas" shall refer to the number of garage parking spaces and if and only if the Owner of Occupants of a Lot have more vehicles than the number of garage parking spaces, those excess vehicles which are an Owners or Occupant's primary means of transportation on a regular basis may be parked on the driveway on the Lot; provided, however, no vehicle parked in the driveway of a Lot shall encroach onto the sidewalks in the Community. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. Driveways must be kept in good repair and free of oil stains. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, if it is not licensed or if it is in a condition such that it is incapable of being operated upon the

public highways. Such vehicle may be removed from the Community by the Board of Directors. Motorized go carts, scooters, minibikes, and similar means of motorized transportation shall be prohibited from the Community. No boats or other watercraft, motor homes or campers shall be stored, parked or otherwise in or on any Lot; provided, however, such recreational automobiles may be kept or stored in an area designated by the Board for such purpose, if any. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. Commercial vehicles shall not be permitted on any Common Property or any Lot, except if kept in an enclosed garage; provided construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Property.

If any vehicle is parked on any portion of the Common Property owned by the Association in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

#### 7.5 Animals and Pets.

No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets in reasonable number as determined by the Board; provided, however, no more than two (2) dogs shall be permitted on any Lot. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article 6 hereof. The Board shall have the right to adopt reasonable rules and regulations regarding animals and pets in the Community. The Board shall also have the authority to remove any animal that presents a threat to the health or safety of any Owner or Occupant and may require abatement of any animal that presents a nuisance or unreasonable source of annoyance.

#### 7.6 Nuisance.

It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No Lot shall be used for the storage of anything that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Community. No plants, animals, device or thing of any sort shall be

maintained in the Community whose activities or existence is in any way, noxious, offensive, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, sirens, bells, amplifiers or other sound devices, except such devices as may be used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment or device, mechanical or otherwise, which creates or produces excessively loud sounds, vibrations or any other conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used, placed, installed or maintained on any Lot, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board.

#### 7.7 Unsightly or Unkempt Conditions.

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

#### 7.8 Antennae.

No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install: (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services or to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement or (c) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless such installation: (i) imposes unreasonable delay or prevents the use of the antennae; (ii) unreasonably increases the cost of installation; or (iii) an acceptable quality signal cannot otherwise be obtained.

#### 7.9 Tree Removal.

No trees that are more than four inches in diameter at a point 12 inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed without the prior written consent of the approving authority under Article 6 hereof. Owners shall also comply with any local ordinance applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant.

7.10 Drainage.

Catch basins, retention ponds, detention ponds and drainage areas are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.11 Sight Distance at Intersections.

All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition; provided, however, pursuant to the Jackson County Zoning Ordinance, no obstruction, including, without limitation, fences, walls, shrubbery and other structures, shall be permitted between the heights of three (3) feet and fifteen (15) feet and such obstruction shall not be located within twenty (20) feet of the intersection of any right-of-way.

7.12 Garbage Cans, Woodpiles, Etc.

All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within the Community, except by Declarant during the original construction of a residence on a Lot. The Board of Directors shall have the right to adopt reasonable rules and regulations trash removal and/or recycling in the Community.

7.13 Subdivision of Lot.

No Lot shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Lot(s) with the consent of the Owner of the affected Lot(s) and to approve the revision and re-recording of any plat of any Lot(s) owned by any Builder or developer, including, but not limited to, changing any Lot to Common Property or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such Lot(s).

7.14 Firearms.

The use of firearms in the Community is prohibited. The term "firearms" includes, without limitation, 8-B guns and pellet guns.

7.15 Fences.

No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without prior written approval in accordance with the provisions of

Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarant and the Association may erect any type offence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for the health and safety of Owners and Occupants.

7.16 Utility Lines.

Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

7.17 Air-Conditioning Units.

No window air conditioning units may be installed.

7.18 Lighting.

Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.19 Artificial Vegetation, Exterior Sculpture, Gardens, Play Equipment, Water Features and Similar Items.

No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, water features and similar items must be approved under and pursuant to Article 6 hereof. No vegetable garden, hammock, statuary or play equipment (including, without limitation, basketball goals) may be erected on any Lot, without prior written approval in accordance with the provisions of Article 6 hereof and/or compliance with written guidelines established under Article 6 hereof, as applicable.

7.20 Energy Conservation Equipment.

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant or the Architectural Review Committee, as the case may be, in accordance with the provisions of Article 6 hereof.

7.21 Swimming Pools.

No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any above-ground swimming pool be permitted.

7.22 Mailboxes.

All mailboxes serving Lots shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.23 Clotheslines.

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

7.24 Window Treatments.

No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white or off-white.

7.25 Entry Features.

Owners shall not alter, remove or add improvements to any entry feature or fencing constructed or erected by the Declarant or the Association on any Lot, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 6 hereof.

7.26 Streams, Lakes and Ponds.

Except as herein provided all streams, lakes and storm water retention or detention ponds within the Community shall be used for aesthetic amenities and storm water drainage purposes only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association and/or the Declarant and the officers, directors, agents and employees of any of them shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any stream, lake or pond within the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any stream, storm water retention or detention ponds or lake within the Community or any other Common Property. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the water level of all other bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any stream, storm water retention or detention ponds or lake within the Community. Owners shall not be permitted to withdraw water from any lake or pond as may exist in the Community

without the prior written consent of the Board of Directors. Owners shall have no riparian or littoral rights with respect to the waters in any stream, lake or pond in the Community.

7.27 Stream Buffer.

Portions of the Community shall contain a fifty foot (50') and twenty-five foot (25') stream buffer, respectively, as more particularly shown on the recorded subdivision plat(s) for the Community. Land-disturbing activities shall not be conducted within any stream buffer area as shown on the recorded subdivision plats for the Community, except with prior written approval under Article 6 hereof and in compliance with Georgia law, including without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, *et seq.*, as amended from time to time.

7.28 Walking and Bicycle Trails.

Except as herein provided, the walking and bicycle trails (collectively "trails") within the Community shall be used as foot paths and bicycle trails only. Scooters, motorcycles and similar wheeled means of motorized transportation or recreation shall not be permitted on the trails in the Community; provided, however, this provision shall not prohibit the use of a trail by any person with a disability by the use of a wheelchair or other necessary transportation device or by emergency and safety personnel and their respective vehicles. The Board of Directors may adopt such rules as may be deemed appropriate concerning the use of the trails in the Community. This provision shall not apply to concrete sidewalks located along the public streets within the Community.

7.29 Flags.

No flags may be displayed on any Lot without prior written approval in accordance with the provisions of Article 6 hereof; provided, however no such approval shall be required to display the flag of the United States of America and the current flag of the State of Georgia on a Lot in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors of the Association may promulgate reasonable rules and regulations with respect to the display of flags in the Community, including, without limitation, regulating the size of flags that may be displayed and reasonable time, place and manner restrictions pertaining to the display of the United States flag; provided, however, the Association shall not enact any rule or regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on a Lot in the Community in contravention of the Freedom to Display the America Flag Act of 2005.

7.30 Open Space.

The Association and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any Open Space Area within the Community. For purposes of this Section, "Open Space Area" means the areas identified as "Open Space" on the plat(s) for Seasons at Pendergrass described in Exhibit "A" and such additional plats as may be recorded by Declarant in the Jackson County, Georgia land records, together with and such portions of the Common Property described as Open Space on the concept plan for the Community submitted by the Declarant and approved by the City of

Pendergrass, or otherwise designated as such by the Declarant or the Board of Directors. No Person shall place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any Open Space Area. The Open Space Area(s) shall remain primarily as undisturbed natural areas; provided, however, the Open Space Area(s) may contain walking trails and detention lakes and may be used for passive recreational and easement purposes consistent with site specific zoning conditions for the Community, the terms of any deed restrictions or conservation easement applicable to the Open Space Area, and such additional rules governing use thereof as the Association may adopt. Applicable governmental agencies, the Declarant and the Association, shall have the sole right to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around the Open Space Area. The Board of Directors may issue rules and regulations on the permissible use of the Open Space Area by Owners, Occupants and guests, which rules and regulations shall not be inconsistent with the purposes and intentions of the zoning ordinance(s) of Jackson County or the City of Pendergrass, as the case may be, as the same may be amended and supplemented from time to time. This Section 7.30 may not be amended without the prior written approval of the City of Pendergrass.

## **Article 8**

### **Insurance and Casualty Losses**

#### **8.1 Insurance on Common Property.**

The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, including, without limitation the recreational facilities, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall cover the maximum funds that will be in, the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

## 8.2 Individual Insurance.

By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, including a Lot Owner's personal property, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times. Owners shall, if and when requested by the Board of Directors, provide evidence of such insurance coverage to the Board. In the event an Owner fails to obtain and maintain insurance as required herein, the Association may purchase such insurance on behalf of said Owner and specifically assess the costs thereof to said Owner as provided in Section 4.5 hereof.

## 8.3 Damage and Destruction - Insured by Association.

Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least seventy-five percent (75%) of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information is made available; provided, however, such extension shall not exceed sixty (60) days.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the

Association in a neat and attractive condition consistent with the Community-Wide Standard and this Declaration.

8.4 Damage and Destruction-- Insured by Owners.

The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable period of time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction and thereafter shall maintain said Lot in a manner consistent with the Community-Wide Standard and this Declaration.

**Article 9**  
**Mortgagee Provisions**

9.1 Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, 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 Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Audit.

Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

9.3 No Priority.

No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

## **Article 10** **Easements**

### **10.1   General.**

Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision plat(s) for the Community, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any other documents recorded in the Office of Superior Court of Jackson County, Georgia.

### **10.2   Easements for Use and Enjoyment.**

Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owner's Lot in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

(a)   the right of the Association to charge reasonable admission and other fees for the use of any Community recreational facilities, to limit the number of Persons who may use the Community recreational facilities, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(b)   the right of the Association to suspend the right of an Owner to vote and/or to use the Common Property, including, without limitation, the Community recreational facilities, for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(c)   the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community.);

(d)   the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights of-way over, under and through the Common Property;

(e) the right of the Association to transfer or convey all or any portion of the Common Property upon the approval of the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant;

(f) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration, in any Supplementary Declaration or in any deed conveying Common Property to the Association; and

(g) all encumbrances and other matters shown by the public records affecting title to the Common Property, including, without limitation, any restrictive covenant, conservation easement or deed restriction affecting the Open Space Area as defined in Section 7.30 herein, if any.

#### 10.3 Easements for Utilities.

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

#### 10.4 Easement for Emergency Entry.

The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules and regulations, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective 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 Lot to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable period of time after requested by the Association, but shall not authorize entry into any single family dwelling without permission of the Owner.

#### 10.5 Easement for Maintenance.

Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the maintenance required hereunder.

Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

10.6 Easement for Entry Features.

There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features for the Community, over and upon any portion of a Lot containing such entry features as may be more fully described on a recorded subdivision plat for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and the right to grade the land under and around the same.

10.7 Easement for Drainage.

There is hereby reserved by the Declarant and granted to the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision plat(s) for the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Community or any portion thereof. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. In addition, there is hereby reserved to the Declarant and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surface on Lots. Neither the Declarant, the Association nor any Builder or Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction on a Lot.

10.8 Easement During Construction and Sale Period.

Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design and development guidelines, and amendments thereto, Declarant reserves an easement across the Community to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or for the development, construction or benefit of any neighboring property including, but not limited to: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage

lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant may use residences, offices or other buildings owned or leased by Declarant as model residences and sales offices without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

#### 10.9 Easement for Walking Trails and Bicycle Trails.

Declarant hereby reserves and grants to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of walking trails and bicycle trails for the Community, over and upon any portion of the Community containing such walking trails and bicycle trails as may be shown on one or more recorded subdivision plats for the Community. The easement herein granted shall permit joint usage of such easement by: (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) guests of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of the walking trails and bicycle trails which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to grant additional non-exclusive easements to third parties, over, under and across the walking trails and bicycle trails in the Community. The easement hereby granted shall include, without limitation, the right to erect appropriate signs, grading adjacent property for proper drainage, and related activities and improvements.

### **Article 11** **General Provisions**

#### 11.1 Enforcement.

Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design and development guidelines and to assess the

cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

#### 11.2 Occupants Bound.

All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design and development guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design and development guidelines, if any. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

#### 11.3 Self-Help.

In addition to any other remedies provided for herein, the Association, the Declarant, the Architectural Review Committee or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by Law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

#### 11.4 Duration.

The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Lots has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

#### 11.5 Exercise and Termination of Rights of Declarant.

(a) All rights reserved in this Declaration to the Declarant to convey, modify, or otherwise deal in and with any Lot, Common Property, or other real or personal property which it owns shall also extend to and may be exercised by Declarant in connection with any real or

personal property which Declarant owns as a tenant-in-common with others, to the extent that Declarant has the consent of, or the legal authority (as trustee or through a power of attorney, contractual right, covenant, or other legal mechanism), to execute contracts or other legal documents on behalf of all co-owners of such property.

(b) Except as otherwise specified in this Declaration, the Articles of Incorporation and the Bylaws, the rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect when (a) the Declarant's unilateral right to annex additional property under Section 2.2 has terminated, (b) the Declarant no longer owns any property in the Community, and (c) a certificate of occupancy has been issued for a dwelling on each Lot in the Community; unless earlier terminated upon recording by Declarant in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's rights hereunder.

#### 11.6 Amendment.

(a) This Declaration may be amended unilaterally at any time and from time to time by Declarant: (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot Consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment by Declarant shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Lot without the consent of the affected Owner.

(b) The Board of Directors, with the written consent of the Declarant, and without a vote of the members, may amend this Declaration for the sole purpose of electing to be governed by and complying with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*

(c) In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof the Owners of at least two-thirds (2/3) of the Lots and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any

Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given. The amendments authorized by this Section may be of uniform or non-uniform application and Owners shall be deemed to have agreed that the Declaration may be amended as provided herein and that any rule of law requiring unanimous approval of amendments having a non-uniform application shall not apply.

11.7 Gender and Grammar.

The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

11.8 Severability.

Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

11.9 Captions.

The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

11.10 No Merger.

There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant, while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

11.11 Preparer.

The original Declaration was prepared by Lisa A. Crawford and Rachel E. Conrad, Dorough & Dorough, LLC, Attorneys at Law, Two Decatur Town Center, Suite 520, 125 Clairemont Avenue, Decatur, Georgia 30030.

#### 11.12 Notices.

Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to the Declarant, or the Association at the address of their respective registered agent in the State of Georgia. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, delivered in person, including delivery by federal Express or other reputable courier service. The time period in which a response to any such Notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or receipt on the return receipt of the Notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice sent.

#### 11.13 Perpetuities.

Should any of the provisions of this Declaration be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the date that is ninety (90) years from and after the date of recording of this Declaration.

#### 11.14 No Discrimination.

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

#### 11.15 Indemnification.

To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member 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, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

#### 11.16 Agreements.

Subject to the prior approval of Declarant, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

#### 11.17 Variances.

Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.

#### 11.18 Litigation.

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. This Section shall not apply 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 herein; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage of votes necessary to institute proceedings as provided above.

#### 11.19 Security.

ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS, AND THE ARCHITECTURAL REVIEW COMMITTEE, IF ANY, DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE, IF ANY, ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, GUEST, LICENSEE, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THE ARCHITECTURAL

REVIEW COMMITTEE, IF ANY, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, SCBT, as the Declarant and as the Owner of a portion of the property described on Exhibit "A," together with the other Owners who have executed a Joinder and Consent attached hereto, hereby approve this Amended and Restated Declaration effective as of the 7 day of March, 2013.

**DECLARANT:** SCBT, d/b/a CBT, a Division of SCBT f/k/a  
SCBT, N.A. d/b/a CBT, a Division of SCBT,  
N.A., a South Carolina corporation authorized  
to transact business in Georgia

By: [Signature]  
Name: MARK GRAVITT  
Title: Vice President

[Corporate Seal]

Attest: [Signature]  
Name: Ronald E. Gailey  
Title: Vice President

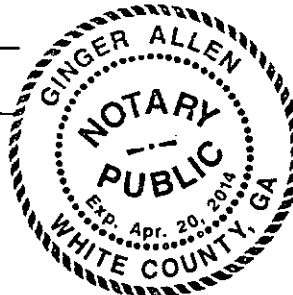
Signed, sealed and delivered  
this \_\_\_ day of \_\_\_\_\_, 2013,  
in the presence of:

[Signature]  
Unofficial Witness  
Print Name: \_\_\_\_\_

[Signature]  
Notary Public  
Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]



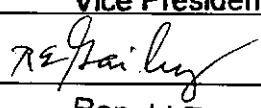
# **JOINDER AND CONSENT OF OWNER**

The undersigned Owner(s) of Lots 84-182, Lots 330-369, and Lots 377-417, all as shown on that Final Plat of The Seasons at Pendergrass Phase One recorded in Plat Book 66, Pages 78-83, in the Office of the Clerk of the Superior Court of Jackson County, Georgia, does hereby join in execution of the Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions and Easements for Seasons at Pendergrass to evidence its consent to and approval of the same, the substitution of Seasons at Pendergrass Community Association, Inc. as the Association referenced therein, and the adoption of the By-Laws of Seasons at Pendergrass Community Association, Inc. attached as Exhibit "C" thereto.

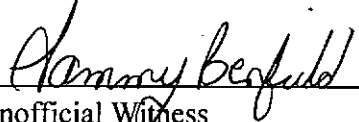
**OWNER:** SCBT, d/b/a CBT, a Division of SCBT f/k/a  
SCBT, N.A. d/b/a CBT, a Division of  
SCBT, N.A., a South Carolina corporation  
authorized to transact business in Georgia

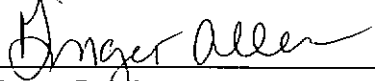
By:   
Name: MARK GRAVITT  
Title: Vice President

[Corporate Seal]

Attest:   
Name: Ronald E. Gailey  
Title: Vice President

Signed, sealed and delivered this  
\_\_\_\_ day of \_\_\_\_\_, 2013,  
in the presence of:

  
Unofficial Witness  
Print Name: \_\_\_\_\_

  
Notary Public  
Print Name: \_\_\_\_\_

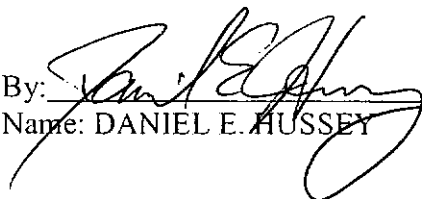


My commission expires: \_\_\_\_\_

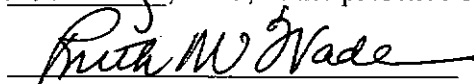
## JOINDER AND CONSENT OF OWNER

The undersigned Owner(s) of LOT 79 as shown on that Final Plat of The Seasons at Pendergrass Phase One recorded in Plat Book 66, Pages 78-83, in the Office of the Clerk of the Superior Court of Jackson County, Georgia, does hereby join in execution of the Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions and Easements for Seasons at Pendergrass to evidence its consent to and approval of the same, the substitution of Seasons at Pendergrass Community Association, Inc. as the Association referenced therein, and the adoption of the By-Laws of Seasons at Pendergrass Community Association, Inc. attached as Exhibit "C" thereto.

DANIEL E. HUSSEY

By:   
Name: DANIEL E. HUSSEY

Signed, sealed and delivered this 27 day of  
February, 2013, in the presence of:



Unofficial Witness

Print Name: RUTH M. WADE

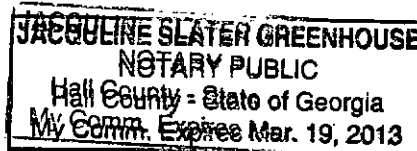


[Notarial Seal]

Notary Public

Print Name: Jacqueline Slater Greenhouse

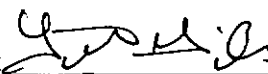
My commission expires: Mar 19, 2013



## JOINDER AND CONSENT OF OWNER

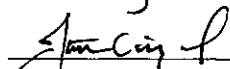
The undersigned Owner(s) of LOT 75 as shown on that Final Plat of The Seasons at Pendergrass Phase One recorded in Plat Book 66, Pages 78-83, in the Office of the Clerk of the Superior Court of Jackson County, Georgia, does hereby join in execution of the Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions and Easements for Seasons at Pendergrass to evidence its consent to and approval of the same, the substitution of Seasons at Pendergrass Community Association, Inc. as the Association referenced therein, and the adoption of the By-Laws of Seasons at Pendergrass Community Association, Inc. attached as Exhibit "C" thereto.

LUTHER GILES

By: 

Name: LUTHER GILES

Signed, sealed and delivered this 22<sup>nd</sup> day of February, 2013, in the presence of:



Unofficial Witness

Print Name: JONATHAN MILFORD

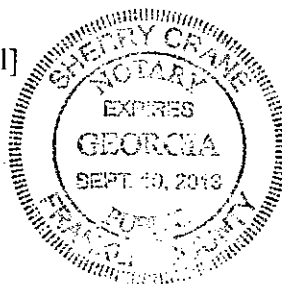


Notary Public

Print Name: Sherry Crane

My commission expires: Sept. 10, 2013

[Notarial Seal]



## JOINDER AND CONSENT OF OWNER

The undersigned Owner(s) of LOT 82 as shown on that Final Plat of The Seasons at Pendergrass Phase One recorded in Plat Book 66, Pages 78-83, in the Office of the Clerk of the Superior Court of Jackson County, Georgia, does hereby join in execution of the Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions and Easements for Seasons at Pendergrass to evidence its consent to and approval of the same, the substitution of Seasons at Pendergrass Community Association, Inc. as the Association referenced therein, and the adoption of the By-Laws of Seasons at Pendergrass Community Association, Inc. attached as Exhibit "C" thereto.

BERTO FRAGA, IDA FRAGA,  
JOSE A. VALERI, IDA F. VALERI AND  
ENIO C. FRAGA

By: \_\_\_\_\_  
Name: BERTO FRAGA

Signed, sealed and delivered this \_\_\_\_ day of  
\_\_\_\_\_, 2013, in the presence of:

\_\_\_\_\_  
Unofficial Witness  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
[Notarial Seal]

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

By: \_\_\_\_\_  
Name: IDA FRAGA

Signed, sealed and delivered this \_\_\_\_ day of  
\_\_\_\_\_, 2013, in the presence of:

\_\_\_\_\_  
Unofficial Witness  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
[Notarial Seal]

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

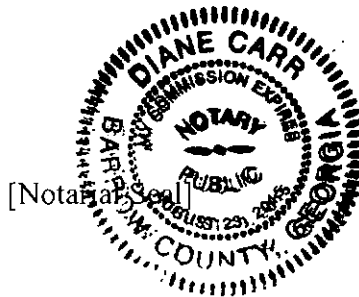
[SIGNATURES CONTINUED ON NEXT PAGE]

By: Jose A. Valeri  
Name: JOSE A. VALERI

Signed, sealed and delivered this 25 day of  
February, 2013, in the presence of:

Larry Beth Williamson  
Unofficial Witness  
Print Name: Larry Beth Williamson

Diane Carr  
Notary Public  
Print Name: Diane Carr  
My commission expires: 8/23/15



By: \_\_\_\_\_  
Name: IDA F. VALERI

Signed, sealed and delivered this \_\_\_\_ day of  
\_\_\_\_\_, 2013, in the presence of:

\_\_\_\_\_  
Unofficial Witness  
Print Name: \_\_\_\_\_

[Notarial Seal]

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

By: \_\_\_\_\_  
Name: ENIO C. FRAGA

Signed, sealed and delivered this \_\_\_\_ day of  
\_\_\_\_\_, 2013, in the presence of:

\_\_\_\_\_  
Unofficial Witness  
Print Name: \_\_\_\_\_

[Notarial Seal]

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## **EXHIBIT "A"**

### **Property Description**

ALL THAT TRACT OR PARCEL OF LAND LYING and being in General Militia District 428, Cunningham District, City of Pendergrass, Georgia, containing approximately 73.86 acres, as more particularly shown on that certain **Final Plat for The Seasons at Pendergrass Phase One**, prepared by Clark Design Group, P.C., containing the seal of H. Lanier Dunn, G.R.L.S. No. 2243, dated August 10, 2005, recorded August 24, 2005, in Plat Book 66, Pages 78-83, as revised by that plat at Plat Book 70, Pages 92-97, Jackson County, Georgia land records, reference to said plats of survey and the record thereof being hereby made for a more complete description.

**EXHIBIT"B"**

**Additional Property Which May Be Unilaterally  
Submitted To This Declaration by Declarant**

All that tract or parcel of land lying and being in General Militia District 428,  
Cunningham District, City of Pendergrass, Jackson County, Georgia.

**EXHIBIT "C"**

**BYLAWS**

**OF**

**SEASONS AT PENDERGRASS COMMUNITY ASSOCIATION, INC.**

**BYLAWS**  
**OF**  
**SEASONS AT PENDERGRASS COMMUNITY ASSOCIATION, INC.**

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**BYLAWS**  
**OF**  
**SEASONS AT PENDERGRASS COMMUNITY ASSOCIATION, INC.**

**Article 1**  
**Name, Principal Office, and Definitions**

1.1 **Name.**

The name of the corporation shall be Seasons at Pendergrass Community Association, Inc. (the "Association").

1.2 **Principal Office.**

The Association may have such offices in Paulding County and/or elsewhere in the state of Georgia as the Board may determine from time to time.

1.3 **Definitions.**

Capitalized words used in these Bylaws shall have the same meaning as set forth in the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Seasons at Pendergrass recorded in Book 47-O, Page 354, *et seq.*, the office of the Clerk of the Superior Court of Paulding County, Georgia, as it may be amended, supplemented, and renewed (the "Declaration") or the definition given where the term first appears in bold print in these Bylaws. All other terms shall be given their normal, commonly understood definitions or the meanings given in the Georgia Nonprofit Corporation Code (O.C.G.A. Section 14-3-1 01, *et seq.*) (the "Nonprofit Code"). Statutory references shall be construed as meaning the referenced statute or portion thereof as the same may exist from time to time. The term "**majority**," as used in these Bylaws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**Article 2**  
**Membership: Meetings, Quorum, Voting, Proxies**

2.1 **Membership.**

The Association initially shall have two classes of membership, Owner Membership and Declarant Membership. The Declarant Membership shall terminate when (i) the Declarant no longer owns any property in the Community; (ii) the Declarant's unilateral right to annex property into the Community pursuant to Section 2.2 of the Declaration has expired; and (iii) a certificate of occupancy has been issued for every Lot. Provisions of the Declaration pertaining to membership are incorporated by this reference.

## 2.2 Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as the Board may designate, either in the Community or as convenient thereto as possible and practical.

## 2.3 Calling of Meetings.

(a) Regular Meetings. There shall be an annual meeting of the members at such date, place and time as the Board of Directors shall determine, to receive the reports of the officers and to transact such other business as may properly come before the meeting. The Board may schedule other regular meetings to occur quarterly, monthly, or on such other regular schedule as the Board deems appropriate.

(b) Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the membership if so directed by Board resolution or within 30 days after receipt of a petition signed and dated by members entitled to cast at least twenty-five percent (25%) of the Total Association Vote and describing the purpose or purposes for which the meeting is to be called.

(c) Notice of Meetings. At least 10 but not more than 60 days before any regular or special meeting of the Members, the President, the Secretary, or the officers or other persons calling a meeting of the Members shall deliver or cause to be delivered to each Member a written notice stating the place, day, and hour of the meeting. In the case of a special meeting, or when otherwise required by the Act, the notice shall state the purpose of the meeting and any items on the agenda which require a vote of the members. In addition, the Association shall include notice of a matter a Member intends to raise at the meeting if requested in writing or by electronic transmission to do so by a person entitled to call a special meeting, provided such request is received by the secretary or president of the Association at least 10 days before the Association gives notice of the meeting. If proxies are permitted, the notice shall also state the procedures for appointing proxies. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice. Notices shall be delivered by such means as permitted under Section 9.5.

## 2.4 Record Date.

The record date for a determination of members entitled to notice of any meeting of members or any adjournment thereof shall be the day prior to the date of mailing or electronic transmission of notices of such meeting. The Board may fix in advance a record date for determination of members for any other purpose, such date to be not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

## 2.5 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 or by electronic transmission signed by the member entitled to notice and delivered to the Association for inclusion in the minutes for filing with the

Association's records, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice as to all business transacted at the meeting, unless such member specifically objects to lack of proper notice at the time the meeting is called to order or before a vote is taken on the matter as to which an objection based on lack of proper notice is raised.

## 2.6. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are prepared, reflecting all resolutions adopted and all other transactions occurring at such meetings. The minutes shall be kept with the Association's books and records.

## 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 proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the scheduled date of the original meeting. Upon reconvening the meeting, if which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings in Section 2.4.

## 2.8 Membership List.

After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney: (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is included with the notice of the meeting or upon request; or (2) during ordinary business hours at the Association's principal office or at such other reasonable place as may be specified in the notice in the city where the meeting will be held. In the event that the Association makes the list available on an electronic network, the Association may take reasonable steps to ensure that such information is available only to members of the Association. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

## 2.9 Voting.

The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated herein.

## 2.10 Proxies.

At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, signed either personally or by an electronic transmission, dated, and filed with the Secretary before the appointed time of each meeting. An electronic transmission must contain or be accompanied by information from which it can be determined that the member, the member's agent, or the member's attorney-in-fact authorized the electronic transmission. Proxies may be delivered to the Board of Directors by personal delivery, U.S. mail, or electronic transmission to the Secretary or other officer or agent authorized to tabulate votes. Unless the proxy specifically provided otherwise, a proxy shall be presumed to cover all votes which the member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Lot for which it was given; (b) receipt of notice by the Secretary of the death or judicially declared incompetence of the member; (c) receipt by the Secretary or other officer or agent authorized to tabulate votes of written revocation signed by the member; (d) receipt by the Secretary or other officer or agent authorized to tabulate votes of a subsequent appointment form signed by the member; (e) attendance by the member and voting in person at any meeting; or (f) the expiration of eleven (11) months from the date of the proxy appointment form.

## 2.11 Quorum.

The presence, in person or by proxy, of members entitled to cast at least ten percent (10%) of each class of votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Declaration or applicable law for specific actions, must approve any action taken.

## 2.12 Action Without A Formal Meeting.

Any action required or permitted to be approved by the members may be approved without a meeting if the action is approved by the consent, in writing or by electronic transmission, of members holding at least a majority of the Total Association Vote Power or such greater number of votes as may be required to approve such action under the Declaration, the Articles, these Bylaws, or applicable law, as of the record date established pursuant to Section 2.4 or if no other record date has been established, as of the date that the first member signs a consent. Such consents must be dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each consent in writing or by electronic transmission shall be included in the minutes of meetings of members filed in the permanent records of the Association. No consent in writing or by electronic transmission shall be valid unless: (1) the consenting member has been furnished the same material that the Nonprofit Code would have required to be sent to members in a notice

of a meeting if the proposed action had been submitted to the members for action at a meeting; or (2) the written consent contains an express waiver of the right to receive the material otherwise required to be furnished. Action taken under this Section shall have the same effect as a vote taken at a meeting. A consent transmitted electronically shall be deemed to be written, signed and dated by the member for purposes of this Section if it sets forth or is delivered with information indicating the date of such transmission and from which the Association can reasonably determine or conclude that it was transmitted by the member.

### 2.13 Action By Written Ballot.

Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if (i) the Association delivers a ballot in writing or by electronic transmission to each member entitled to vote on the matter, which ballot sets forth each proposed action and provides an opportunity to vote for or against each proposed action; and (ii) the number of votes cast by ballot equals or exceeds the quorum required to be present if a meeting were held to consider such action; and (iii) the number of ballots approving the action equals or exceeds the number of votes that would be required to approve the matter if put to a vote 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 ballot in writing or electronic transmission shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely ballot in writing or by electronic transmission, once received by the Association, may not be revoked.. The results of each action by ballot in writing or by electronic transmission shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

## **Article 3**

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

#### 3.1 Governing Body; Composition.

The affairs of the Association shall be governed by a Board of Directors.

Directors shall be natural persons who are eighteen (18) years of age or older. Except for directors appointed by the Declarant, each director must be a member or the spouse of a member. If an Owner is not an individual, any officer, director, partner, employee or any trust officer authorized by such Owner shall be eligible to serve as a director. No Person may serve on the Board at the same time as such Person's spouse or any co-Owner of such Person's Lot.

#### 3.2 Directors Appointed by Declarant.

The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) December 31, 2020; (b) the date on which all of the Lots planned by Declarant to be a part of the Community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (c) the surrender by Declarant in

writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Community. The total number of Lots planned by Declarant for the Community shall initially be the number of lots shown on the Declarant's land use plan for the development as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration. The final total number of Lots planned for the Community shall be the actual number of Lots shown on the recorded subdivision plat(s) for the Community at such time as all property in the Community is shown on a recorded subdivision plat and the Declarant's unilateral right to annex additional property pursuant to Section 2.2 of the Declaration has expired, regardless of any different number of Lots shown from time to time on the land use plan.

### 3.3 Number of Directors.

During the period that the Declarant has the right to appoint and remove the officers and/or directors of the Association as provided above, the Board of Directors shall consist of three to five members, as determined by Declarant from time to time. Thereafter, the Board shall consist of five members, who shall be elected as provided below.

### 3.4 Nomination of Directors.

Elected directors may be nominated from the floor, if a meeting is held for the election of directors and may also be nominated by a nominating committee, if established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

### 3.5 Election and Term of Office.

Not later than 30 days after the Declarant's right to appoint directors and officers terminates, the Association shall call for an election by which the members shall elect five (5) directors. Three (3) directors shall be elected to serve until the annual meeting following the second anniversary of their election, and two (2) directors shall be elected to serve until the annual meeting following the first anniversary of their election. Thereafter, upon the expiration of the term of each director, the members shall elect a successor to serve a term of two (2) years. All members of the Association shall be entitled to vote on all directors to be elected, and the candidates receiving the most votes shall be elected. Notwithstanding anything herein to the contrary, the members of the Board of Directors shall continue in office until their respective successors shall have been elected and take office.

For each election, voting shall be by written ballot. A Member may cast that number of votes equal to the number of Lots the Member owns times the number of positions to be filled by such election. The Member may cast all such votes for a single candidate or may allocate such votes among different candidates, in the Member's discretion; however, no fractional votes may be cast.

### 3.6 Removal of Directors.

(a) The Declarant may remove and replace any director appointed by the Declarant pursuant to Section 3.2.

(b) At any annual, regular or special meeting of the Association, any one (1) or more of the members of the Board of Directors elected by the members pursuant to Section 3.5 may be removed, with or without cause, by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director elected pursuant to Section 3.5 who (i) ceases to meet the qualifications to serve as a director under Section 3.1, or (ii) has three (3) consecutive unexcused absences from Board meetings, or (iii) is delinquent in the payment of an assessment for more than thirty (30) days, may be removed by a majority vote of the remaining directors.

### 3.7 Vacancies.

Vacancies in the Board of Directors caused by any reason other than the removal of a director pursuant to Section 3.6, shall be filled by a vote of the majority of the remaining directors, except that so long as there is a Declarant Membership, the Declarant shall have the right to appoint a successor to fill any vacancy resulting from the death, disability, or resignation of any representative of the Declarant elected to serve as a director pursuant to Section 3.5. Each Person so selected shall serve the unexpired portion of the term.

### 3.8 Organizational Meetings.

The first meeting of a newly elected Board of Directors shall be held within ten (10) days after the election at such time and place as the directors may conveniently assemble.

### 3.9 Regular Meetings.

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, provided that, after the right of Declarant to appoint the directors terminates, at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

### 3.10 Special Meetings.

Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the date, 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 (including commercial delivery service) to such director's home or office; (b) written notice by first class mail, postage prepaid; (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office; or (d) electronically in accordance with the Nonprofit Code, with confirmation of transmission, if the director has consented in writing to such method of delivery

and has provided the Board with an email address for such purpose. All such notices shall be given or sent to the director's mailing address, email address, or telephone number or facsimile as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four (4) days before the time set for the meeting. Notices given by personal delivery, electronic transmission or telephone shall be given at least two (2) days before the day set for the meeting.

### 3.11 Waiver of Notice.

The business transacted at any meeting of the Board of Directors, 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 either in writing or by electronic transmission which is included in the minutes or filed with the official records of the Association. 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.

### 3.12 Quorum of Board of Directors.

At all meetings of the Board of Directors, 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, unless Georgia law, these Bylaws, or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

### 3.13 Compensation.

No director or officer shall receive any compensation from the Association for acting as such unless the Declarant, so long as there is a Declarant Membership, and members entitled to cast a majority of the total votes in the Association, approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association, provided such director has made known his or her interest to the Board prior to entering into such contract, and a majority of the directors, excluding any interested director, has approved such contract.

### 3.14 Open Meetings.

Subject to the provisions of Section 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 expressly so authorized by the Board. In such case, the President may limit the time any such individual may speak.

### 3.15 Executive Session.

The Board may adjourn any Board meeting and reconvene in executive session, and may restrict attendance to directors and such other persons as the Board may specifically invite and announce during the open portion of the Board meeting, to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, alleged violations of the Declaration, Design Guidelines, or Association rules, delinquencies in assessments owed to the Association, and such other matters for which Georgia law may specifically authorize restricted attendance; provided, the nature of any and all business to be considered in executive session shall first be announced in open session and any vote on such matters shall be taken in open session unless otherwise permitted by law.

### 3.16 Action Without A Formal Meeting.

Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing or by electronic transmission, setting forth the action so taken, shall be signed by the number of directors that would be required to approve the same action at a Board meeting at which all of the directors were present and delivered to the Association for inclusion in the minutes and filing in the corporate records. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such consent shall have the same force and effect as a vote at a meeting. The Board shall promptly notify all directors of any action so approved and the effective date of such action and provide each director with a copy of the signed, written consent.

### 3.17 Conduct of Meetings; Telephonic Participation.

The President or, in the President's absence, any officer whom the Board approves by resolution shall preside over Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

### 3.18 Powers.

The Board of Directors 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 all acts and things as are not by law, the Declaration, the Articles of Incorporation of the Association, or these Bylaws directed to be done and exercised by the Owners or the membership. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparing and adopting an annual budget in which there shall be established the contribution of each member to the common expenses;

(b) making assessments to defray the common expenses and establishing the means and method of collecting such assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material 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 administer the Association; provided, in the Board's business judgment any reserve funds may be deposited with financial institutions other than banks;

(f) making and amending rules and regulations;

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

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;

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

(j) keeping books with detailed accounts of the receipts and expenditures of the Association and the actions thereof, and specifying the maintenance and repair expenses and any other expenses incurred;

(k) authorizing contracts on behalf of the Association; and

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

### 3.19 Management Agent.

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 Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility. A Declarant, or an affiliate of a Declarant, may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days' written notice.

A management agent shall not accept remuneration 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. The management agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

### 3.20 Borrowing.

The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, if the total amount of such borrowing, together with all other outstanding debt of the Association, exceeds or would exceed the greater of Fifty Thousand Dollars (\$50,000.00) or twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year.

### 3.21. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Association agreements, contracts, deeds, leases, checks, and other legal instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

### 3.22 Fining Procedure.

The Board shall not impose a fine (a late charge shall not constitute a fine) for violation of the Declaration, design guidelines, or Association Rules, unless and until the following procedure is followed:

(a) Written notice shall be delivered to the alleged violator by first-class or certified mail sent to the address of the Lot which he or she owns or occupies or such other address as may be shown for such person on the Association's records, specifying:

- (1) the nature of the alleged violation and the fine to be imposed;
- (2) that the alleged violator may, within ten (10) days from the date of the notice, submit a written request for a hearing regarding the matter;

(3) the name, address and telephone numbers of a person to contact to request a hearing;

(4) that the alleged violator may produce statements, evidence, and witnesses at the hearing; and

(5) that the proposed fine will be imposed and all rights to challenge the same are waived if a hearing is not requested within the allotted ten (10) days.

(b) If a hearing is requested within the allotted 10-day period, it shall be held before the Board in executive session, and the alleged violator shall be given a reasonable opportunity to be heard and to present evidence and witnesses on his or her behalf, after which the Board shall determine whether a violation has occurred and whether the fine shall be imposed. The minutes of the meeting shall contain a written statement of the results of the hearing and written notice thereof shall be mailed to the violator within three (3) days after the hearing.

#### **Article 4** **Officers**

##### **4.1 Officers.**

The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, except the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

##### **4.2 Election, Term of Office, and Vacancies.**

Except during the period in which the Declarant has the right to appoint the officers of the Association, the officers of the Association shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors following the election of directors to serve a term of one year and until their successors are elected. 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 Additional Officers and Agents.**

The Board of Directors may appoint such other officers, including assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

##### **4.4 Salaries.**

The officers shall receive no compensation except upon such conditions as apply to compensation of directors under Section 3.13.

#### 4.5 Removal.

Except for officers appointed by the Declarant, any officer may be removed, with or without cause, by the Board of Directors.

#### 4.6 President.

The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty to attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

#### 4.7 Vice President.

The Vice President(s), if any, shall act in the President's absence or disability and shall have all powers, duties, and responsibilities provided for the President when so acting, and shall perform such other duties as shall from time to time be imposed upon any Vice President by the Board or delegated to a Vice President by the President.

#### 4.8 Secretary.

The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors; notify the members and directors of meetings as provided by these Bylaws and Georgia Law; have custody of the seal of the Association; affix such seal to any instrument requiring the same attest the signature or certify the incumbency or signature of any officer of the Association; and perform such other duties as the President, or the Board of Directors may prescribe. The Secretary shall perform the duties of the Treasurer of the Association in the absence or disability of the Treasurer.

#### 4.9 Treasurer.

The Treasurer shall keep, or cause to be kept, the financial books and records of the Association, and shall faithfully account for the Association's funds, financial assets, and other assets entrusted to the Treasurer's care and custody. The Treasurer shall make such reports as may be necessary to keep the President and the Board of Directors informed at all times as to the financial condition of the Association, and shall perform such other duties as the President or the Board of Directors may prescribe. The Treasurer shall maintain the money and other assets of the Association in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer may provide for the investment of the money and other assets of the Association consistent with the needs of the Association to disburse such money and assets in the course of the Association's business. The Treasurer shall perform the duties of the Secretary of the Association in the absence or disability of the Secretary.

#### 4.10 Resignation.

Any officer may resign at any time by giving written notice to the Board of Directors. 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.

### **Article 5** **Committees**

In addition to such committees as the Board may appoint pursuant to the Declaration, the Board may appoint advisory committees to perform such tasks and to serve for such periods as may be designated by the Board. Each committee shall be composed and shall operate in accordance with the terms of the Declaration or resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory committee shall not be authorized to exercise any authority of the Board under the Articles of Incorporation of the Association, the Declaration, these Bylaws or the Nonprofit Code.

### **Article 6** **Miscellaneous**

#### 6.1 Fiscal Year.

The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.

#### 6.2 Parliamentary Rules.

Unless modified or dispensed with, in whole or in part, by Board resolution, *Roberts Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia Law, the Articles of Incorporation of the Association, the Declaration or these Bylaws.

#### 6.3 Conflicts.

If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation of the Association, the Declaration and these Bylaws, the provisions of Georgia law, the Declaration, the Articles of Incorporation of the Association and the Bylaws (in that order) shall prevail.

#### 6.4 Amendment.

These Bylaws may be amended by the Board of Directors, with the consent of the Declarant so long as there is a Declarant Membership, if such amendment is necessary to: (a) correct any clerical, typographical or technical errors or bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) enable an

institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Lots subject to the Declaration; (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration; or (e) comply with the provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*, if applicable. In addition, these Bylaws may be amended upon the affirmative vote, written consent or any combination thereof of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant, except that no provision shall be amended by a lesser vote than required for action to be taken under that provision.

Amendments to these Bylaws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within one year of its recordation, or such amendment shall be presumed to have been validly adopted.

#### 6.5. Books and Records.

(a) *Turnover of Books and Records.* Within 60 days after termination of the Declarant Membership, the Declarant shall deliver to the Association all property, books and records of the Association in the Declarant's possession.

(b) *Inspection by Members and Mortgagees.* The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: (i) the Declaration, Bylaws, Articles of Incorporation and rules of the Association, (ii) the membership register, (iii) detailed and accurate books of account, (iv) the minutes of meetings of the Members, the Board, and committees, and (v) a other documents required by the Nonprofit Code. The Board shall provide for such inspection to take place at the Association's office or at such other place within reasonable proximity to the Community as the Board shall designate.

(c) *Rules for Inspection.* The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records; and

(ii) hours and days of the week when such an inspection may be made;

and

(iii) payment of the cost of reproducing documents requested.

(d) *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

## 6.6 Notices.

Unless otherwise provided in these Bylaws or the Declaration, all notices, demands, bills, statements, or other communications under these Bylaws or the Declaration shall be in writing and shall be deemed to have been duly given if delivered by personal delivery; by United States mail, first class postage prepaid; by reputable overnight delivery or courier service; or by telephone facsimile or electronic transmission with confirmation of transmission:

(a) If to an Owner or Occupant, at the address, telephone facsimile number, or e-mail address which the Owner or Occupant has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Owner or the Lot where such Occupant resides, as applicable; provided, if given by electronic transmission it shall be by a form of electronic transmission consented to by the Owner and otherwise in accordance with the Nonprofit Code;

(b) If to the Declarant, at the address, telephone facsimile number, or e-mail address which the Declarant has designated by written notice to the Association or, if no address has been designated, at the Declarant's principal address as it appears on the Secretary of State's records;(c) If to the Association, the managing agent, or the Board of Directors, at the address, telephone facsimile number, or e-mail address of the principal office of the Association or the managing agent, respectively, or at such other mailing address as shall be designated in writing by the Board of Directors; provided, if given by electronic transmission it shall be by a form of electronic transmission consented by the Board of Directors as provided in a resolution of the Board of Directors and otherwise in accordance with the Nonprofit Code.

Except as the Declaration, these Bylaws or the Nonprofit Code may otherwise specify, notice sent in accordance with this Section shall be deemed to have been duly given and effective on the earlier of the date actually received by the addressee or at the address of the addressee described above, or:

(i) if sent by United States mail, five (5) days after deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

## 6.7 Electronic Records, Signatures and Documents.

To the extent permitted by Georgia Law, the Declaration and these Bylaws, the Association and its officers, directors and members, Owners, and Occupants may perform any obligation or exercise any right under the Declaration or Bylaws by use of any technological means as the Board has determined provides sufficient security, reliability, identification and verifiability, and has approved in its sole discretion.