

## **ARTICLE XIII.**

### **GENERAL PROVISIONS**

**Section 1. Enforcement** Each Owner and every occupant of a Lot shall comply strictly with this Declaration, the Bylaws, the rules and regulations, as they may be lawfully or modified from time to time, and with any deed restrictions. The Board of Directors may impose fines or other sanctions, which shall be collected provided for collection of assessments. Failure to comply with this Declaration, the Bylaws or (he rules and regulations shall be grounds for an action for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or by an aggrieved Owner in a proper case (or by the Declarant, so long as the Declarant has an option unilaterally to subject additional property LO this Declaration as provided in Article [X]). Failure by the Association, any Owner, or the Declarant to enforce any of the foregoing provisions shall not be a waiver of the right to enforce those provisions in the future.

**Section 2. Self Help** In addition to any other remedies, the Association or its duly authorized agent (or the Declarant, SQ long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX) shall have the power to enter upon a Lot or any portion of-the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected ax provided for the collection of assessments.

**Section 3. Duration.** The covenants, restrictions and easements of this Declaration shall run with and hind the Community, and shall inure to die benefit of and shall be enforceable by the Association or any Owner,their respective legal representatives, heirs, successors, and assigns perpetually to extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law. after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless fifty-one (51%) percent of the persons owning plots execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all owners affected by the covenant and a description of the covenant to be terminated or such other requirement as provided in O.C.G.A. 44-5-60. A written instrument reflecting any termination must be recorded no sooner than, but within two years immediately preceding the beginning of a twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or

other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Paragraph.

**Section 4. Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b) if an amendment is necessary to enable any reputable title insurance company issue title insurance coverage with respect to the Lots subject this Declaration; (c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration, However, any such amendment shall not adversely affect the title to any Owner's lot Lot unless the Lot Owner consents to the amendment in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner, nor shall it adversely affect title to any lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least sixty-seven (67%) percent of the total Association vote; provided, however, that in the event the Declarant still has, at the time of such vote, an option unilaterally to subject additional property to this Declaration as provided in Article IX, then in that case the written consent and approval of the Declarant shall also be necessary for any such Amendment to be valid and effectual. Valid Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of this Declaration which reserves, grants, or exempts special rights or exemptions to the Declarant or to any Approved Builder shall be amended without the Declarant's or Approved Builder's, prior written consent so long as the Declarant or Approved Builder, owns any property in the Community, or which is subject to annexation to the Community, primarily for development and/or sale.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least one (51%) percent of the votes of lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a written response to any written

proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

**Section 5. Security** The Association may, but shall not be required to, provide measures or take actions which directly or indirectly improve safety in the Community. However, each Owner, for themselves and their tenants, guests, licensees, and invitees acknowledge and agree that the Association is not a provider of security and shall have no duty to provide security for the Community. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide security shall lie solely with each Owner. The Association shall not be held liable for any or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

**Section 6. Dispute Resolution.** Any Owner or occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or occupant files any lawsuit against the Association, the Board, any director, any officer, or any agent of the Association. The Owner or occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the owner's or occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

**Section 7.** The Common shall remain undivided, and no Lot Owner or any other Person shall bring any action for partition or division of the whole or any part of the property without the written consent of all Owners and of all holders of any Mortgages encumbering any portion of the Community.

**Section 8. Gender and Grammar** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 9. 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 effect 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.

**Section 10. 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.

**Section 11 Preparer** . This Declaration was prepared by Haley & Haley Attorneys, LLC, 4484 Commerce Drive, Buford, Georgia 30518.

**Section 12. Perpetuities** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then only said provision will be voided and all other terms and conditions shall remain valid and unchanged.

**Section 13. Indemnification** In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of Association), by reason of the fact that such person is or was serving as a director or owner of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

**Section 14. Construction and Sales Period** Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, Design Guidelines, and any amendments, so long as there is development and construction related to the initial sale of residences constructed on Lots, it shall be expressly permissible for Declarant and any Approved Builder to maintain and carry on, upon such portion of the Community as Declarant or any Approved Builder may deem necessary, such facilities and activities as in the sole opinion of Declarant or any Approved Builder may be required, convenient, or incidental to Declarant's or any Approved Builders development, construction, and sales activities related to property described on Exhibit "A" and (if any) in any Supplementary Declaration as contemplated in Article IX hereinbelow, including, but without limitation the following:

- (a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community;
- (b) the right to tie into any portion of the Community with driveways, parking areas and walkways;
- (c) 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, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(d) the right to carry on sales and promotional activities in the Community; and the right to construct, use, place, park, and/or operate business offices, signs, construction trailers, sales trailers, mobile sales offices, residences, model residences, and stationary sales offices. Declarant and any Approved Builder may use residences, offices, or other buildings owned or leased by Declarant or an Approved Builder as model residences and sales offices and may also use recreational facilities otherwise available for use by the Community as a sales office without charge.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and any resultant damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant or an Approved Builder owns any property in the Community, or which is subject to annexation to the Community, primarily for development and/or sale.

**Section 15. Contracts Executed During Declarant Control.** All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the Directors and officers of the Association under the Bylaws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' written notice.

**Section 16. Books and Records** All member of the Association and any institutional holder of a first Mortgage shall be entitled to inspect the following records\* for any reason, at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the member wishes to inspect and copy them:

- (a) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (b) Bylaws or restated Bylaws and all amendments to them currently in effect;
- (c) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (d) resolutions adopted by either its members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of members or any class or category of members;
- (e) the minutes of all meetings of members and records of all actions approved by the members for at least the past three (3) years, and longer if available;
- (f) all written communications to members generally within the past three (3) years, including the financial statement furnished for the past three (3) years,

- (g) a list of the names and business or home addresses of its current directors and officers; and
- (h) its most recent annual report delivered to the Secretary of State, if any.

A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy them, provided that, and only if, the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose.

- (a) excerpts from minutes of any meeting of the Board of Directors, records of any action of a committee of the Board of Directors while acting in place of the Board of Directors on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board of Directors without a meeting, to the extent not subject to inspection under subsection 9(a);
- (b) accounting records of the Association; and
- (c) the membership list, only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member in accordance with the provisions of this section

**Section 17. Financial Review** A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy. The Owners may require the accounts of the Association be audited as a common expense by a public accountant. 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 any available audited or unaudited financial statement within ninety (90) days of the date of the request.

**Section 18. Notice of Sale or Lease** In the event an Owner sells or leases his or her lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the lot and such other information as the Board may reasonably require.

**Section 19. Agreements** Subject to the prior approval of Declarant (so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX) 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 representative<sup>8</sup>, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community. .

**Section 20. Implied Rights.** The Association may exercise any right or privilege given to it expressly by thig Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

**Section 21. Board Vacancies.** Notwithstanding anything to the contrary contained in this Declaration. the Board of Directors or its designee 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 would not be inconsistent with the overall scheme of development for the Community.

**Section 22. Dissolution** The Board of Directors is prohibited from dissolving this Community Association without the approval of the Gwinnett County Board of Commissions.