

After recording, return to  
Elizabeth F. Thompson, Esq.  
Lenke & Thompson, P.C.  
1515 Bass Road, Suite 1  
Macon, GA 31210



Doc ID: 003131280026 Type: GLR  
Filed: 02/21/2005 at 08:30:49 AM  
Fee Amt: \$80.00 Page 1 of 28  
Bibb County Superior Court  
Dianne Brannen Clerk

BK 6514 PG 121-146

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TOBEE CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the date set forth on the signature page hereof by HWY 80, LLC, a Georgia limited liability company, and JVR ASSOCIATES, LLC, a Georgia limited liability company (the "Declarant").

Declarant is the owner of the real property described on Exhibit "A," which is attached hereto and incorporated herein by reference. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Tobee Creek Owners Association, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (capitalized terms are defined in Article 1 below).

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

This document does not and is not intended to create a condominium within the meaning of the O.C.G.A. §44-3-70, et seq. nor a property owners' development within the meaning of the O.C.G.A. §44-3-220, et seq.

ARTICLE 1: DEFINITIONS

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

1.1. "Supplemental Declaration": An instrument filed in the Public Records which subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.2. "ARB": The Architectural Review Board, as described in Section 9.2.

1.3. "Area of Common Responsibility": The Common Area, together with any additional areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or other applicable covenant, contract, or agreement.

1.4. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Tobee Creek Owners Association, as filed with the Secretary of the State of Georgia.

1.5. "Association": Tobee Creek Owners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

1.6. "Board of Directors": The body responsible for administration of the Association, selected as provided in the By Laws and serving as the Board of Directors under Georgia corporate law. The initial Board Directors shall consist of Wendell Parker, Sr., Wendell Parker, Jr., David Green, James Kersey and Sharon Falls.

1.7. "Builder": Any person who purchases one (1) or more Lots for the purpose of constructing improvements thereon for later sale to consumers or who purchases one (1) or more parcels of land within the Properties for further subdivision, development and/or resale in the ordinary course of such Person's business. Any person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

1.8. "By-Laws": The By-Laws of Tobee Creek Owners Association, Inc.

1.9. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a Majority of the members of the Board of Directors as provided in Section 3.2.

1.10. "Common Area": All real and personal property, including easements and licenses, which the

26

Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners.

1.11. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members holding a Majority of the total Class "A" votes of the Association.

1.12. "Community Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. The Community-Wide standard shall meet the minimum standards established by the Design Guidelines, rules and regulation of the Association or Board resolutions, whichever is the highest standard. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the ARB.

1.13. "Cost Sharing Agreement": Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Properties, for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or operator of such property.

1.14. "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.15. "Declarant": HWY 80, LLC, a Georgia limited liability company and JVR ASSOCIATES, LLC, a Georgia limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) Person entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

1.16. "Design Guidelines": The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.17. "Detention Facility": Any area within the Properties serving as a detention structure or facility, including but not limited to berms, swales or any facility designated as a "detention pond" or a "proposed detention facility" on a recorded plat of all or any portion of the Properties.

1.18. "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration or any Additional Property or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.19. "General Assessment": Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.1 and 8.2.

1.20. "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the rules of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.

1.21. "Lake": All bodies of water located within the Properties which will be owned by the Association and subject to the Lake Use Restrictions.

1.22. "Lake Use Restrictions": Use restrictions, rules and procedures for the Lake promulgated by the Association.

1.23. "Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land which is part of the Lot as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area, common property owned by the Association, or property dedicated to the public.

In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Lot until such time as a subdivision plat is filed with respect to all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this Section.

1.24. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.25. "Member": A Person subject to membership in the Association pursuant to Section 3.2

1.26. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

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

1.28. "Owner": One (1) or more Persons who hold the record title to any Lot, including the Declarant and any

Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.29. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.30. "Properties": The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7. Phase One of the subject property is platted as a subdivision in Plat Book 91, Page 563, Clerk's Office, Bibb County, Georgia records, which plat is incorporated herein for reference thereto.

1.31. "Public Records": The Official Records of the Clerk of the Superior Courts of Bibb County, Georgia or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.32. "Special Assessment": Assessments levied in accordance with Section 8.4.

1.33. "Specific Assessment": Assessments levied in accordance with Section 8.5.

## ARTICLE 2: PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Association to rent, lease or reserve any portion of the Common Area to any Owner for the exclusive use of such Owner and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;
- (e) The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area pursuant to Section 4.3;
- (f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;
- (g) The right of the Board to permit use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (i) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;
- (j) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot; provided however, the Owner shall remain responsible for payment of all assessments and other charges.

2.2. Lake. Access to and use of the Lake is strictly subject to the Lake Use Restrictions and no Person gains any right to enter or to use the Lake or to gain access to the Lake from the Properties other than by virtue of membership in the Association or ownership or occupancy of a Lot. Each Owner of a Lot acknowledges and agrees to strictly abide by the Lake Use Restrictions. Any Person, including any Owner, using the Lake for any purpose shall assume the risk of such use. Under no circumstance shall the Declarant, the Association, any Builder, or any Person acting on their behalf assume any liability for use of the Lake by an Owner, its invitees, or licensees.

2.3. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across the Lake, the Common Area, or any public facilities from Lots will be preserved without impairment. The Declarant and the Association shall have no obligation to prune or thin trees or other landscaping, and shall have the right to add trees and other landscaping adjacent to the Lake.

2.4. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.5. Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken or conveyed under threat of condemnation to any authority having the power of condemnation or eminent

domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

#### ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(a) and in the By-Laws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A." Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.9. In any situation where there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class "B." The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a Majority of the members of the Board of Directors during the Class "B" Control Period which shall continue until the first to occur of the following:

- (i) When one hundred (100%) percent of the Lots permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders;
- (ii) December 31, 2021; or
- (iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

- (i) two (2) years after expiration of the Class "B" Control Period; or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners within any Additional Property made subject to this Declaration pursuant to Article 7, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

#### ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.

4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibit "A," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any Lake, pond or other body of water that may be conveyed. Upon written request of Declarant, the Association shall reconvey to Declarant any portion of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.3. Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose

sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in the By-Laws. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall constitute a lien upon the Lot of the violator (In the event that any occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);
- (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (c) suspending an Owner's right to vote;
- (d) suspending any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and
- (e) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any occupant, guest or invitee of a Lot violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Lot that the violator is occupying or visiting.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy a Specific Assessment to cover all costs incurred in bringing a Lot into compliance with the terms of the Governing Documents.

The Association may also elect to enforce any provisions of the Governing Documents by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs, reasonably incurred in such action.

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

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

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

**4.5. Governmental Interests.** During the Development Period, the Declarant may designate sites within the Properties for utility facilities, parks, streets, and other quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

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

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

4.7. Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to Bibb County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity or charitable entity or to any private utility company.

4.8. Security. Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including the dwelling and the contents of the dwelling, resulting from acts of third parties or acts of God, including without limitation, fires.

4.9. Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties. The Declarant or the Association may also convey any portion of the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties. Any instrument conveying Common Area as authorized herein shall reserve a perpetual, non-exclusive easement over and across any property conveyed in favor of the Association and shall acknowledge that fact that the property conveyed shall remain Common Area by virtue of the easement reserved in favor of the Association. This instrument shall also require the grantee of the property to acknowledge that it shall not make the property conveyed open to the members of the general public. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.10. Lake. Neither the Association, the original Declarant, nor any successor Declarant shall be held liable for any loss or damage by reason of use of the Lake for any purpose by Owners, their invitees, licensees, and tenants. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors, ARB and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Lake shall do so only as permitted under the Lake Use Restrictions and applicable governmental laws, ordinances, rules and regulations. Each Person assumes all risks of personal injury, and loss or damage to property, including Lots, resulting from or associated with use of the Lake.

4.11. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, licensees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided, including garbage collection, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association. Declarant has installed street lights throughout the Properties, which expense shall be reimbursed to Declarant as soon as possible, but in no event later than 2 years after installation of same, as monies are made available through collection of Assessments, either General, Specific or Special.

Each Owner, occupant, guest and invitee acknowledges that neither the Association, the Board nor Declarant shall in any way be responsible for inappropriate use of any internet, intranet or other computer related services provided by the Association ("Network"), nor can the Association ensure prompt removal of any inappropriate communication after transmission or posting. Accordingly, the Association makes no guarantee, nor assumes any liability to any Members or other users of the Network for any purpose whatsoever. Under no circumstances shall the Association or the Declarant, their parents, subsidiaries, employees, officers, directors, members, managers, successors or assigns be responsible for any damages, losses or consequences resulting from a Member's use of such Network.

#### ARTICLE 5: MAINTENANCE

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

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

- (i) all Common Area;
- (ii) any irrigation system situated upon the Common Area;
- (iii) except as modified herein, all landscaping, trees, and other flora and all structures and improvements, including but not limited to any parks, recreational areas, and entry features and sidewalks situated upon the Common Area;
- (iv) all furnishings, equipment and other personal property of the

Association;

(v) except as modified herein, any landscaping, trees, including but not limited to street trees, and other flora, parks, bike and pedestrian pathways/trails, street lights, buffers, entry features, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties;

(vi) any Detention Facilities, including all storm water collection systems located outside of the public right-of-way, regardless of whether such facilities are situated upon the Common Area or within a Lot;

(vii) the Lake, (provided that the Association may leave the Lake in its natural state without further obligation for maintenance);

(viii) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, the Design Guidelines or any subdivision plat for the Properties recorded in the Public Records or any contract or agreement for maintenance thereof entered into by the Association; and

(ix) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Notwithstanding anything contained herein to the contrary, Owner (other than Declarant) shall be responsible for providing and maintaining all landscaping on the lot (and adjoining area in the right of way between the curb and sidewalk, including street trees, if applicable) and furthermore, the Owner may be responsible for the replacement of diseased trees as may be determined by the Association.

(a) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association and during the Development Period the Declarant agree in writing to discontinue such operation.

(b) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association will continue to perform all or any portion of its maintenance responsibilities as set forth in Section 5.1(a)(v) herein.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof.

(d) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

**5.2. Owner's Responsibility.** Each Owner shall maintain his or her Lot, and all structures, parking areas, sprinkler and irrigation systems, landscaping, trees, and other flora, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Each Owner shall also maintain the driveway, including driveways shared between two Owners, and mailbox, if any, serving his or her Lot and all landscaping located in the right-of-way immediately adjacent to the Owner's Lot. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association plus a ten percent (10%) administration fee against the Lot and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association or its designee under this Section shall not constitute a trespass.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

#### ARTICLE 6: INSURANCE AND CASUALTY LOSSES

##### 6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

- (i) Blanket property insurance on any Area of Common Responsibility;
- (ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members;
- (iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;
- (iv) Directors' and officers' liability coverage;
- (v) Fidelity insurance covering all Persons responsible for handling Association funds; and
- (vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event of an insured loss, the deductible shall be treated as a Common Expense and assessed against all Lots. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.6.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Middle Georgia or Macon area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1 (a).

- (i) All insurance coverage obtained by the Board shall:
  - (1) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
  - (2) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Lots within the Neighborhood and their Mortgagees, as their interests may appear;
  - (3) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
  - (4) contain an inflation guard endorsement;
  - (5) include an agreed amount endorsement, if the policy contains a co-insurance clause; and
  - (6) an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.
- (ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:
  - (1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
  - (2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
  - (3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any



curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(4) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(5) a cross liability provision; and

(6) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(a) Damage and Destruction. In the event of any insured loss, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and during the Development Period, the Declarant, decide within ninety (90) Days after the loss not to repair or reconstruct. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

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

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1 (a).

6.2. Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Lot and the Owner thereof pursuant to Section 8.5.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

#### ARTICLE 7 : ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation by Declarant. Until twenty (20) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit "A" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

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

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2. Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

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

7.3. Withdrawal of Property, Replatting, Rezoning, Resubdividing. The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal. Furthermore, Declarant reserves the right to replat, rezone and/or resubdivide and to place or record such replatting and modify the description of the property hereunder accordingly.

7.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5. Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

#### ARTICLE 8: ASSESSMENTS

8.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) General Assessments as described in Section 8.2 to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section 8.6. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

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

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of title to a Lot and impose special requirements for Owners with a history of delinquent payment. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

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

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

8.2. Computation of General Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.3. The Lot Assessment Amount for the first year, or any part thereof, shall be \$500.00, which shall be payable pursuant to Item 8.9. Said fee shall be considered an initiation fee for the first calendar year, and shall not be prorated. The annual Lot Assessment Amount shall then be due beginning the first day of the fiscal following the closing.

General Assessments shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, and any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year and any income expected to be generated from any Cost Sharing Agreement.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a

contribution or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years and the treatment of such payment shall be made known to the membership, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year plus an additional five percent (5%) shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure. The Board shall be authorized to borrow money on behalf of the Association.

**8.3. Reserve Budget.** The Board may, in its sole discretion, annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general budget reserve amounts sufficient to meet the projected needs of the Association.

**8.4. Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Lots, if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be allocated equally among all Lots. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes allocated to Lots which will be subject to such Special Assessment and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**8.5. Specific Assessments.** The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, garbage collection, intranet and similar services and facilities), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments. The Association may also levy a Specific Assessment against the Lots within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules; provided however, the Board shall give prior written notice to the Owners of Lots in the neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

**8.6. Lien for Assessments.** The Association shall have a lien against each Lot to secure payment of assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of Georgia law), late charges in such amount as the Board may establish (subject to the limitations of Georgia law), costs of collection and reasonable attorneys fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure. The Declarant or the Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Lot owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other

purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the date which the Lot is conveyed to a Person other than a Builder or Declarant. With respect to any Lot owned by a Builder, assessments shall commence upon the actual occupancy of such Lot, excluding any period that such Lot is being used exclusively as a model home. The first annual General Assessment, if any, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

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

8.9. Exempt Property. The following property shall be exempt from payment of General Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or any public or private utility;

(c) Any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of open space for public benefit and held by such agency or organization for such recreational and open space purposes; and

8.10. Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder or upon occupancy of a Lot by a Person other than a Builder or Declarant and upon resale of such Lot by each successor purchaser, an initiation fee shall be paid by or on behalf of the purchaser or occupant to Association in an amount equal to Five Hundred Dollars (\$500.00) per Lot beginning in the 2005 fiscal year; provided, however, that the initiation fee may be increased at any time at the discretion of the Board of Directors, but shall not exceed the then current General Assessment. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Lot, or if the obligation to pay the initiation fee arises by virtue of occupancy of a Lot by a Person other than a Builder or Declarant, the initiation fee shall be paid at the time of acquisition of the Lot. Initiation fees shall be utilized for the working capital of the Association to cover operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

8.11. Default Interest Rate; NSF Checks; Late Fees. Except as otherwise provided in the Governing Documents, any assessment levied upon an Owner which is not paid within fifteen (15) Days after the date upon which it is due shall bear interest at the lesser of (a) the rate of 18% per annum; or (b) the maximum rate of interest permissible under the laws of the State of Georgia. In addition, if any Owner pays any assessment (General, Special or Specific) with a check on an account that has insufficient funds ("NSF"), the Board may, in its sole discretion, demand that all future payments be made by certified check or money order along with imposing a reasonable processing charge. Finally, the Association may charge a delinquent Owner an administrative/late fee in an amount determined by the Board of Directors for each installment due to the Association which is delinquent. Any payment received by the Association shall be applied first to any attorneys fees and other costs of collection, then to any interest accrued on the late installment, then to any administrative late fee and then to the delinquent assessment.

#### ARTICLE 9: ARCHITECTURAL STANDARDS

9.1. General. No exterior structure or improvement, as described in Section 9.5, shall be placed, erected, installed or made upon any Lot or adjacent to any Lot where the purpose of the structure is to service such Lot except in compliance with this Article, and with the prior written approval of the ARB under Section 9.3, unless exempted from the application and approval requirements pursuant to Section 9.4.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer, unless otherwise approved by the ARB in its sole discretion.

This Article shall not apply to the activities of the Declarant. This Article may not be amended during the Development Period without the Declarant's written consent.

9.2. Architectural Review. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that all structures and improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of the Properties or the Additional Property. Therefore, the Declarant may, on its behalf, establish an Architectural Review Board to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. The members of

the ARB need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals.

The ARB shall consist of three persons and shall have exclusive jurisdiction over all construction on any portion of the Properties. The initial board shall consist of Wendell Parker, Sr., Wendell (Dayle) Parker, Jr. and David Green. Until one hundred percent (100%) of the Properties have been developed and conveyed to Owners other than Builders and the Declarant and initial construction on each Lot has been completed in accordance with the Design Guidelines, the Declarant retains the right to appoint all members of the ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

9.3. Architect and General Contractor Approval. In order to ensure that appropriate standards of construction are maintained throughout the Properties, all architects and Builders must be approved by the ARB prior to engaging in any construction activities. The ARB may implement an approval process utilizing established criteria and requiring the submission of a written application for approval. Approval of architects and Builders may not be construed as a recommendation of a specific architect or Builder by the ARB or the Declarant, nor a guarantee or endorsement of the work of such person. Once approved (unless such approval is withdrawn by the ARB), an approved architect or Builder shall not be required to re-submit to the approval process.

9.4. Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from the Lake. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARB and compliance with the Design Guidelines does not guarantee approval of any application.

The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only. There shall be no limitation on the scope of amendments to the Design Guidelines except that no amendment shall require the modification or removal of any structure previously approved once the approved construction or modification has commenced. The ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The ARB shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, grading, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finished grade elevation, among other considerations.

In reviewing and acting upon any request for approval, the ARB shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The ARB shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed improvements are consistent with the Design Guidelines.

In the event that the ARB fails to approve or to disapprove any application within forty-five (45) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to Section 9.8.

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

Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. However, modifications to the interior of screened porches, patios, windows and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval.

9.5. Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of mailboxes; swing sets and sports and

play equipment; clotheslines; garbage cans; wood piles; swimming pools, gazebos or playhouses; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the ARB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the ARB. The ARB may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

(i) Signs. No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the ARB, except (1) such signs as may be required by legal proceedings; and (2) not more than one (1) professional security sign of such size and location deemed reasonable by the ARB in its sole discretion. Unless in compliance with this Section, no signs shall be posted or erected by any Owner or occupant within any portion of the Properties, including the Common Area, any Lot, any structure or dwelling located on the Common Area or any Lot (if such sign would be visible from the exterior of such structure or dwelling as determined in the ARB's sole discretion).

The Declarant and the ARB reserve the right to prohibit signs and to restrict the size, content, color, lettering, design and location of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) Tree Removal. No trees that are more than eight (8) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the ARB; provided however, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the ARB. The ARB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed. The above requirements shall be in addition to, and not in lieu of, any requirements with respect to the removal imposed by any governmental authority.

(iii) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) approved decorative post lights; (3) pathway lighting; (4) street lights in conformity with any established street lighting program for the Properties; (5) a reasonable number of seasonal decorative lights during the usual and common season as determined in sole discretion of the ARB; (6) front house illumination of model homes; or (7) any additional lighting as may be approved by the ARB.

(iv) Temporary Structures. Except as may be permitted by the ARB, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Lot. No mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Lot as a temporary or permanent dwelling.

(v) Accessory Structures. With the approval of the ARB, detached accessory structures may be placed on a Lot to be used for a playhouse, tool shed, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Lot. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the ARB, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot or in a location approved by the ARB. All accessory structures shall be located within side and rear setback lines as may be required by the ARB or by applicable zoning law.

(vi) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(vii) Standard Mailboxes. ARB reserves the right to approve the style, design, color and location prior to any original installation or replacement of any mailbox and may require the installation of a standard mailbox. Application shall be made to the ARB prior to installation or replacement. By accepting a deed to a Lot, each Owner agrees that the ARB may remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by Owner of such Lot, and all claims for damages caused by the ARB are waived.

9.7. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

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

9.9. Limitation of Liability. The criteria and requirements established by the ARB for approval of architects, Builders and contractors are solely for the Declarant's protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved architect, Builder, or contractor.

Owner's selection of an architect, Builder, or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such architect, Builder or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in the future, against the ARB or the Declarant. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Association, the Board, the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with any licensing or use agreements or copyrights associated with any drawings, specifications, plats, plans, or models, including those in electronic form, nor for ensuring compliance with any building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board, the ARB or any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.10. Enforcement. The Declarant, any member of the ARB or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARB, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the property as required, any authorized agent of Declarant, the ARB or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute enforcement described in Section 4.3. All costs, together with the interest at the minimum rate allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment.

Unless otherwise specified in writing by the ARB, final approval granted hereunto shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

Neither the ARB or any member thereof nor the Association, the Declarant, or their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

#### ARTICLE 10: USE RESTRICTIONS

10.1. Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding a Majority of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant.

10.2. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

10.3. Leasing. Lots may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restriction], and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board. The leasing of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties,

10.4. Occupancy of Unfinished Dwelling. No dwelling erected upon any Lot shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed.

#### 10.5. Vehicles.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Lots unless otherwise approved by the ARB; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is

unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on sidewalks, walking trails, or unpaved Common Area except for public safety vehicles authorized by the Board.

(b) Recreational vehicles shall be parked only in the garages, if any, serving the Lots or, with the prior written approval of the ARB, other hard-surfaced areas which are not visible from the street; provided however, guests of an Owner or occupant may park a recreational vehicle on the driveway serving such Owner's or occupant's Lot for a period not to exceed three (3) Days each calendar year. "Visibility" shall be determined by the ARB in its sole discretion. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, golf carts, campers, buses, commercial trucks and commercial vans. Any recreational vehicle parked or stored in violation of this provision in excess of three (3) Days shall be considered a nuisance and may be removed from the Properties. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

(d) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

10.6. Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association; provided, however, that this shall not preclude Owners, their family, guests, tenants or occupant] from parking vehicles on the shoulders of any alleys located on the Properties in accordance with rules and regulations established by the Board of Directors. With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

10.7. Lake. The Lake shall be used only in accordance with the Lake Use Restrictions promulgated by the Declarant and the Association. Fishing and certain non-gasoline powered water vehicles shall be permitted within the Lake, subject to the Lake Use Restrictions and proper licensing permits as may be required by any governmental entity. Swimming or other active uses of the Lake are strictly governed by the Lake Use Restrictions and may be prohibited altogether in the discretion of the Declarant and the Association. No Person may use the Lake in any fashion for irrigation of a Lot. Notwithstanding the foregoing, the Association shall have the right to use the equipment to deems necessary at the times and places it deems necessary to comply with its maintenance responsibilities. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out Of the authorized or unauthorized use of the Lake.

10.8. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will, in the sole discretion of the Board, 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 Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any tort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature is may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any structure on the Lot unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically. The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

10.9. Storage of Materials, Garbage, Dumping, Etc. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be placed in appropriate containers at a designated location as directed by the Board from time to time and regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any Common Area, drainage ditch, Hood plane, wetland, Lake or other portion of the Properties located outside of a Lot, except that fertilizers may be applied to landscaping on Lots provided the fertilizers comply with any and all applicable state, county, and/or local regulations, and care is taken to minimize runoff. Owners are permitted to spread grass clippings upon their Lots so long as the grass clippings are maintained in a neat and attractive manner in accordance with the Community-Wide Standard.

Each Owner shall maintain its Lot in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash or debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Lot shall be subject to such conditions, rules, and



regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Lots and shall not be buried or covered on the Lot. Any Lot on which construction is in progress may be policed prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Lot upon reasonable notice by Declarant in preparation for special events.

10.10. Combustible Liquid. There shall be no storage of gasoline, propane, kerosene or other fuel, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment. All fuel storage shall be underground. There shall be no above-ground gas or fuel storage of any kind.

10.11. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed after a subdivision plat including such Lot has been approved and filed in the Public Records without the Declarant's prior written consent during the Development Period and the prior written consent of the ARB thereafter. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.12. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped and improved so as to permit safe sight across such areas as may be set forth in the Design Guidelines or otherwise approved by the ARB. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

10.13. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Lot. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Lot. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Lots. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Lot.

(d) Use of any areas designated as "drainage easement areas" on any recorded subdivision plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the Declarant to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 9.

(e) No Person shall alter the grading of any Lot without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

(f) All persons shall comply with any and all applicable federal, state, county and Georgia Department of Natural Resources Environmental Protection Division erosion control ordinances or regulations in construction of improvements on any Lot and, where required, shall maintain silt fencing and vegetative and structural sediment control and collection devices.

(g) All persons shall comply with any and all applicable state or county ground disturbance laws, including, but not limited to Chapter 9 of Title 25 of the Official Code of Georgia Annotated, also referred to as the Call-Before-You-Dig law, specifically O.C.G. A. §25-9-6.

10.14. Irrigation. Owners shall not install irrigation systems which draw upon ground or surface waters nor from any Detention Facility within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

10.15. Lakes and Other Water Bodies. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the Lake, ponds, or streams within the Properties. In addition, the Association shall not be responsible for maintaining, increasing or decreasing the water level within any Lake or other water body or removing vegetation from any Lake or other water body. Except as designated by the Declarant, no trails or pathways shall be established along the perimeter of any Lake or pond. With the exception of any community dock constructed on behalf of the Association, no docks, piers, or gazebos shall be constructed, attached or floated upon or adjacent to any Lake.

10.16. Land Use and Building Type. No lot shall be used except for residential purposes. No residential structure shall be erected, altered, placed or permitted to remain on any lot other than one (1) single-family dwelling, not to exceed three stories in height, and a private garage for not less than two (2), nor more than four (4) automobiles. In addition, all driveways and parking areas shall be constructed with concrete or cement, and no asphalt driveways and parking areas shall be allowed. Notwithstanding the provisions of Item 9 hereof and the authority and discretion therein granted to the ARB, no structures shall be erected, altered, placed or permitted to remain on any lot unless same comply with the following:

a. Roofs. All roofs shall have a pitch of not less than 9/12, exclusive of front and rear shed porches, and shall be roofed with architectural shingles. White or light colored shingles shall not be allowed unless specifically approved by the ARB.

b. Exterior Siding. The exterior of all dwellings, garages and other outbuildings shall be constructed of brick, stucco, drivet, hardy board, stone or vinyl, provided a minimum of 24" of brick or stone from ground level on all front and side foundations shall be required.

c. Fences. No fence or wall shall be allowed on any lot (a) in the front yard or any nearer to the street or road right-of-way line than the rear corner of the residence (exclusive of open porches), (b) any nearer to a side street right-of-way line than the minimum building setback line along such side street right-of-way line, and (c) having posts or support members visible from adjacent lots and streets within the Subdivision. No chain-link fences will be allowed on any lot that would be visible from any street in the Subdivision. Chain-link fences where permitted shall be coated, black or green. Any other materials shall require the prior written approval of the ARB.

d. Garage Entries. All vehicular entrances into garages shall be located on the side or rear of the structure. No garage entrances shall face the front of any lot, unless approved by the ARB.

10.17. Minimum Dwelling Size. No dwelling shall be permitted on any lot in the Properties, unless prior written approval of the same is received from the ARB as herein otherwise provided and shall have not less than 1,600 square feet of heated and cooled living space for one story dwellings, and 2,000 square feet heated and cooled living space for two story dwellings, exclusive of unfinished basements, porches, terraces, patios, garages, and accessory buildings. Provided, however, notwithstanding the, compliance of any such dwelling with the foregoing minimum size requirements, no dwelling shall be permitted on any lot if the quality of workmanship and materials for the proposed dwelling is determined by the ARB (in its discretion) to be substantially less than the quality of workmanship and materials for other dwellings within the Subdivision.

10.18. Building Location. No building shall be located on any lot nearer to the front line or nearer to the side street line than lesser of [i] the minimum building setback line shown on the Subdivision Survey (if any), or [ii] the minimum building setback line requirements under applicable ordinances, rules and regulations of Bibb County, Georgia, or other applicable governmental authority. For the purpose of this covenant, eaves, steps, terraces and open porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

10.19. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently, unless approved by the ARB.

10.20. Diligence. The residence to be constructed on each lot in the subdivision shall be completed in a good and workmanlike manner, and shall be completed within nine (9) months after the beginning of the framing for such construction. The exterior of the dwelling and any other structures located on a lot, and the landscaping of the yards, must be completed within six (6) months after the beginning of the framing for such construction. No improvements which have been partially or totally destroyed by fire or other catastrophe shall be allowed to remain on any lot in the subdivision for more than three (3) months after such destruction or damage. The initial construction of all structures must be completed within one (1) year after commencement of construction, unless extended by the ARB in its sole discretion. All other construction shall be completed within the time limits established by the ARB at the time the project is approved by the ARB. For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB; (b) a building permit has been issued for the Lot by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the dwelling on the Lot.

10.21. Headwalls and Driveways. Any other provision contained herein notwithstanding, any headwall placed on any of said lots shall be constructed of common brick and all driveways shall be constructed and made of concrete. All of said lots shall have said driveways and the same shall be a minimum width of ten (10) feet and shall run from the paving of the road to the minimum building set-back line for the respective lots.

10.22. Clothes Lines and Drying Yards. No clothes lines, drying yards or any other similar structures for the purpose of drying laundry, clothing or other similar items, shall be erected, placed or maintained on any lot, unless same shall be so placed and screened, and kept, so as not to be visible from any street or lot within the subdivision or adjacent to the subdivision. Any fencing or screening for such structures shall require the prior approval of the ARB.

10.23. Satellite Dishes. No Satellite dishes, outside antennae or other similar structures designed for the reception of television or radio signals shall be placed on any lot, unless same shall be so placed and screened, and kept, so as not to be visible from any street or the residence located on any lot within the Subdivision. Any fencing

or screening for such antennae shall require the prior approval of the ARB. Notwithstanding the foregoing provisions, satellite dishes not more than eighteen inches (18") in diameter shall be permitted if located to the rear of a dwelling and not visible from the street fronting the lot on which located.

10.24. Street Lighting. As a benefit to each of the owners of lots in said Subdivision, public street lighting shall be furnished in said Subdivision and the owner of each lot agrees to pay its proportionate share of said lighting to be reflected and charged to each lot owner's quarterly light bill issued by the Bibb County Tax Commissioner. This agreement shall be a covenant running with the land and shall be binding on each lot owner in said Subdivision. If the costs of street lighting cannot be billed directly to each lot owner by the service provider, then the assessment provisions of § 5.1.2 below shall apply.

10.25. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

10.26. Pets. No more than three (3) pets of the customary household variety (including birds) may be kept on any Lot, except upon the express written permission of the ARB; provided, however, that the provisions hereof shall not be deemed to permit the keeping of domestic fowl or farm animals which are specifically excluded. Provided, further, no household pets shall be kept on any lot for commercial purposes or in any manner as creates a nuisance or disturbance to the other lot owners, or violate any law, ordinance or regulation of the State of Georgia, the County in which the Properties are located, or other applicable regulatory or governmental agency. All dogs must be fenced or kept on a leash at all times.

10.27. Sewage Disposal. No individual sewage-disposal system shall be permitted on any lot unless such system is designated, located and constructed in accordance with the requirements, standards and recommendations of the Georgia Department of Public Health. Approval of such systems as installed shall be obtained from such authority or other applicable governmental agency having jurisdiction.

10.28. Landscaping. The builder, contractor, or owner of each residential lot shall certify to the ARB at the completion of the residence erected on each said lot that said builder, contractor, and/or owner have expended not less than \$600.00 to purchase and plant ornamental plants, trees and shrubs (exclusive of grading, topsoil, seed, sod, fertilizer and other landscaping). Said cost is to be based on the costs prevailing at the time of the execution of these Covenants. The ARB may in its sole discretion require such builder, contractor or owner to submit paid receipts evidencing such expenditure. All front yards must be sodded from the front corner of the dwelling to the edge of the curb of pavement of the street on which the dwelling fronts. The remaining yard of each lot must be seeded not later than sixty (60) days after the driveway is paved. On corner lots, the side orientation (not the front orientation) shall be sodded within fifty (50) feet of the property line.

10.29. Variances. The restrictions set out in this Instrument may be altered, varied or waived on an individual lot basis upon compliance with the following regulations and procedures, to-wit:

a. Any owner of any lot in said section desirous of securing a waiver or variance of said restriction shall request the same in writing and shall deliver said petition to any member of the ARB hereinbefore named;

b. If the ARB, in the exercise of its sole discretion, approves of said variance, it shall notify the petitioner of the same in writing;

c. The written approval of any requested alteration or variance by the ARB shall constitute absolute waiver of and shall otherwise void the restrictions contained in this paragraph relative to the subject lot;

d. The waiver of the restrictions contained in this paragraph on any petitioned lot shall not constitute a waiver of said restriction on any other lot; and,

e. Unless the written approval as outlined herein is secured, the restrictions contained in this paragraph shall be binding and of full force and effect. Provided, further that if the ARB fails to notify the petitioning landowner of its approval within thirty (30) days of its receipt of the request, said request shall be deemed to have been denied.

## ARTICLE II: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the easements set forth herein for the enjoyment of the Declarant, the Association, the Members, and the Owners, and their successors-in-title:

11.1. Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots and between each Lot and any adjacent Common Area due to the unintentional placement or staling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement

for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and content of, the Person claiming the benefit of such easement.

11.2. Easement for Utilities. Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easement!, for itself during the Development Period, for the Association, and the designed of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, internet provider, cable provider and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A."

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3. Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.4. Easements for Lake and Drainage Easement Area Maintenance and Flood Water.

(a) The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the Lake, ponds, streams, and wetlands located within the Area of Common Responsibility and any adjacent Lots to (i) install, keep, maintain, and to replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (ii) construct, maintain, and repair any structure retaining water; (iii) construct, maintain and repair any means of access to the Lake, and (iv) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designers shall have an access easement over and across any of the Properties and/or Lots abutting or containing any portion of any Lake, pond, stream, or wetland to the extent reasonably necessary to exercise the rights granted under this Section.

(b) Declarant reserves easement rights for a non-exclusive, perpetual easement to allow the passing, discharging and draining of surface waters over and across the Properties to the drainage easement areas and the Lake shown on recorded subdivision plats of the Properties. The easement rights reserved are perpetual and run with and are appurtenant to title to the Properties and constitute a perpetual burden upon the drainage easement areas. The rights reserved include without limitation the right of the Declarant to go upon the drainage easement areas to effect maintenance, repair and replacement, and to disturb existing landscaping within the drainage easement areas and to temporarily pile dirt and plant material upon the drainage easement areas, provided the area is restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of the activities authorized hereunder. Landscaping and structures in the drainage easement areas are subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of the drainage facilities. Such landscaping and structures shall be installed in conformance with Article 9 herein.

(c) In addition to the foregoing, the Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the Properties to (i) construct, maintain, and repair any wall, dam, or other structure retaining water; (ii) remove trash and other debris therefrom and fulfill any maintenance responsibilities assumed by Declarant; and (iii) maintain and landscape the slopes and banks of the Lake. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.5. Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner foils or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into toy dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, irrigation, and drainage Systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, internet provider, cable provider and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A."

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures, on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (u) to define the limits of any such easements.

11.6. Easements for Maintenance and Enforcement. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including each Lot, to (i) perform its maintenance responsibilities under Article 5, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass. The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys fees, may be assessed against the violator as a Specific Assessment.

11.7. Easements for Detention Facility Maintenance and Flood Water. Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees and the Association the non-exclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon any Detention Facility located within the Area of Common Responsibility, regardless of whether such facility is situated upon the Common Area or within a Lot, to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the

irrigation of any of the Area of Common Responsibility; (b) draw water from such sources for purposes of irrigation; (c) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (d) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any Detention Facility to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves, creates, establishes, promulgates and declares for itself and its successors, assigns and designees, and the Association the non-exclusive, perpetual, appurtenant right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within twenty (20) feet of any Detention Facilities in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain, including, but not limited to the reasonable removal of trees, vegetation, grass and weeds, as needed, the Detention Facilities within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks, if any, pertaining to such facilities; (d) disturb existing landscaping; and (e) pile dirt and plant materials. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. All affected areas shall be restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of any construction or maintenance activities authorized in this Declaration. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (a) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (b) to define the limits of any such easements.

11.8. Lateral Support. Declarant reserves, creates, establishes, promulgates and declares nonexclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Lot, and any improvement which contributes to the lateral support of another portion of the Common Area or of another Lot shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.9. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunto or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

11.10. Easement for Lake Access. Declarant hereby grants to the Owners a perpetual, nonexclusive easement over and across areas of the Common Area adjacent to the Lake designated by recorded subdivision plat for the purpose of ingress and egress to the Lake. Such easement is limited solely to access at the locations designated and constructed by Declarant and/or the Association, and shall not include the right for any individual Owner to construct any structure, walkway or path within the Common Area to facilitate the Lake access. The reserved fishing privileges more particularly described in Section 2.2 shall be exercised only at the above-described locations designated and constructed by Declarant and/or the Association.

11.11 Easement for Entrances. Declarant further reserves, creates, establishes, promulgates and declares for itself and its successors, assigns and designees, and the Association the non-exclusive, perpetual, appurtenant right and easement of access and encroachment over the areas containing the entrances to the Subdivision for purposes of maintenance and upkeep, including an easement for ingress and egress to said areas over any Lots containing entrances.

## ARTICLE 12: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any 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 a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or Occupant which is not cured within sixty days.
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

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

12.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

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

#### ARTICLE 13: DECLARANT'S RIGHTS

13.1. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2. Development and Sales. The Declarant and Builders authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, such as sales activities and promotional events and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. The Declarant and authorized Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and Builders authorized by Declarant may establish within the Properties including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of homes, including, but not limited to, business offices, signs, model homes, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

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

13.4. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, By-Laws or Articles.

13.5. Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Governing Documents, or interfere with development of, construction on, or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Class "B" Member or the Declarant in the Governing Documents.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Class "B" Member has registered with the secretary of the Association, which notice complies with the By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at such meeting.

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Class "B" Member, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10)

Days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Class "B" Member exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.6. Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines shall be effective without prior notice to and the written consent of the Declarant, during the Development Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) fifteen (15) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

#### ARTICLE 14: GENERAL PROVISIONS

##### 14.1. Duration.

(a) Except as otherwise limited by Georgia law, this Declaration shall have perpetual duration. If Georgia law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Georgia law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Lots within the Properties, which instrument is recorded in the Public Records; provided however, regardless of the provisions of Georgia law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Lots and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies with the requirements of O.C.G.A. §44-5-60(d) and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

##### 14.2. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. In addition, during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Members (i) for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220, et seq. (1994) and conforming this Declaration to any mandatory provisions thereof, and (ii) to correct scrivener's errors and other mistakes of fact, provided that amendments under this provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendment shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes held by Members other than the Declarant, and, during the Development Period, the written consent of the Declarant.

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

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege. If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

14.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a



provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4. Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

14.5. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding seventy-five percent (75%) of the total Association vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims 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 services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.6. Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.7. Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

14.8. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations applicable to any Neighborhood, and the Association may, but shall not be required to enforce, the additional covenants, conditions and provisions applicable to any Neighborhood; provided however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and use restrictions and rules of the Association shall prevail or those of any Neighborhood. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

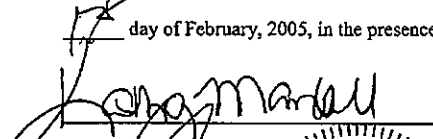
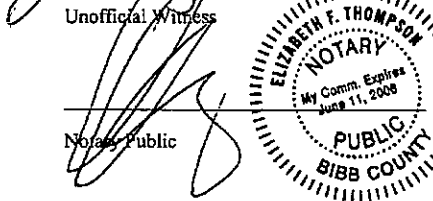
14.9. Compliance. Every Owner and occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

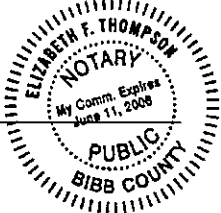
14.10. Exhibits. Exhibit "A" attached to this Declaration is incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration by and through its duly authorized member, this \_\_\_ day of February, 2005.

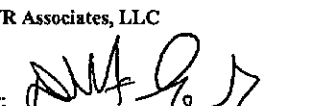
Signed, sealed and delivered this  
\_\_\_\_ day of February, 2005, in the presence

HWY 80, LLC

  
\_\_\_\_\_  
Unofficial Witness  
  
\_\_\_\_\_  
Notary Public



By:   
\_\_\_\_\_  
Managing Member

JVR Associates, LLC  
By:   
\_\_\_\_\_  
Managing Member

26

Exhibit A

All that tract or parcel of land lying and being in Land Lots 233 and 234 of the 3<sup>rd</sup> Land District of Bibb County, Georgia, being designated as Tract No. 2, containing 265.14 acres, said tract being shown more particularly on a plat of survey prepared for Wenjet, LLC by Prince S. Halligan, Jr., Georgia Registered Land Surveyor No. 2516, said plat being dated April 10, 2003, a copy of which is recorded in Plat Book 90, Page 974, Bibb County, Superior Court. Said plat by this reference thereto is incorporated herein for a more accurate legal description.

Together with all rights, interests and title in the Service Road (55' R/W) as shown on the above referenced plat.



Doc ID: 004409930002 Type: GLR  
Filed: 12/28/2005 at 02:55:00 PM  
Fee Amt: \$12.00 Page 1 of 2  
Bibb County Superior Court  
Dianne Brannen Clerk

BK 6902 PG 154-155

After recording, return to:  
Elizabeth F. Thompson  
1515 Bass Road, Suite I  
Macon, GA 31210

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
TOBEE CREEK**

This Amendment is made this 27th day of December, 2005, by HWY 80, LLC, a Georgia limited liability company, and JVR ASSOCIATES, LLC, a Georgia limited liability company, (hereinafter referred to as the "Declarant").

**WITNESSETH:**

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions for Tobee Creek (hereinafter referred to as the "Covenants"), dated February 17, 2005, and recorded in Deed Book 6514, Pages 121-146, in the Office of the Clerk of the Superior Court of Bibb County, Georgia; and

WHEREAS, Declarant executes this Amendment pursuant to Article 14.2(a); and

WHEREAS, Declarant desires to amend the provisions of the Covenants.

NOW, THEREFORE, Declarant hereby declares that the Covenants are amended by adding the following:

1.

Article 13.2 is amended to add the following:

Declarant shall build tennis courts at an appropriate location on the common areas, which shall be owned by the Association. Declarant shall begin building said tennis courts no later than December 31, 2008, and shall complete same as soon as practicably possible, weather permitting.

2.

Except as modified herein, the Covenants shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned does hereunto set its seal by and through its duly authorized member.

HWY 80, LLC

Signed, sealed and delivered this  
27<sup>th</sup> day of December, 2005.

Natalie Arnold  
Unofficial Witness

By [Signature]  
David Green, managing member

[Signature]  
Notary Public

Notary Public, Bibb County, Georgia  
My Commission Expires April 29, 2008

Signed, sealed and delivered this  
27<sup>th</sup> day of December, 2005.

Natalie Arnold  
Unofficial Witness

JVR ASSOCIATES, LLC

By [Signature]  
David Green, managing member

[Signature]  
Notary Public

Notary Public, Bibb County, Georgia  
My Commission Expires April 29, 2008



Doc ID: 005599050004 Type: GLR  
Filed: 09/09/2008 at 04:44:00 PM  
Fee Amt: \$16.00 Page 1 of 4  
Bibb County Superior Court  
Dianne Brannen Clerk

BK 7935 PG 80-83

Record and Return to:  
Martin Snow, LLP  
Attn: Jenny Martin Stansfield  
240 Third Street  
P.O. Box 1806  
Macon, GA 31202-1806  
T0304.23514

I:\pc50\BKCT0304\23514\Amendment to Declaration.wpd

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOBEE CREEK SUBDIVISION, MACON, GEORGIA**

**CROSS REFERENCE: DEED BOOK 6514, PAGE 121,  
CLERK'S OFFICE, BIBB SUPERIOR COURT**

STATE OF GEORGIA  
COUNTY OF BIBB

COMES NOW HWY 80, LLC, a Georgia limited liability company and JVR ASSOCIATES, LLC, a Georgia limited liability company (hereinafter referred to as "Developer") and files this Amendment to Declaration of Covenants, Conditions, and Restrictions for Tobee Creek.

WHEREAS, Developer filed a Declaration of Covenants, Conditions, and Restrictions for Tobee Creek on February 21, 2006 (hereinafter referred to as "Restrictive Covenants"); and

WHEREAS, Developer desires to amend the Restrictive Covenants in order to clarify and better reflect the contact information for the Association, and for other purposes.

NOW, THEREFORE, pursuant to the authority granted to Developer by those Restrictive Covenants, Developer hereby declares and amends the Restrictive Covenants as follows:

1.

ARTICLE 8: ASSESSMENTS of the Restrictive Covenants is hereby amended by deleting Paragraph 8.2 Computation of General Assessments in its entirety and inserting therein the following to read as follows:

4

**"8.2 Computation of General Assessments.** At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.3. The Lot Assessment Amount for the first year, or any part thereof, shall be \$500.00, which shall be payable pursuant to item 8.9. Said fee shall be considered an initiation fee for the first calendar year, and shall not be prorated. The annual Lot Assessment Amount shall then be due beginning of the first day of the fiscal following the closing.

General Assessments shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, and any assessment income expected to be generated from additional Lots reasonably anticipated to become subject to assessment during the fiscal year and any income expected to be generated from any Cost Sharing Agreement.

During the Development Period, any the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstance obligate the Declarant to continue such payments in future years and the treatment of such payment shall be made known to the membership, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year and plus an additional five percent (5%) shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure. The Board shall be authorized to borrow money on behalf of the Association.

The Assessment contained herein shall be in addition to the Capitalization of Association contained in § 8.10 and any and all other assessments contained in the "Restrictive Covenants."

2.

ARTICLE 14: GENERAL PROVISIONS is amended by adding the following paragraph, to wit:

"14.11. Contact Information for the Association. Any and all past, present and future owners of lots within Tobee Creek Subdivision are hereby put on notice of the following contact information for the Association:

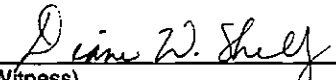
David F. Green  
P. O. Box 6438  
Macon, Georgia 31208  
or  
5400 Riverside Drive, Suite 204  
Macon, Georgia 31210  
Phone: (478) 405-9898  
Fax: (478) 405-9908."

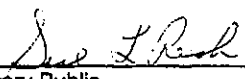
27<sup>th</sup> IN WITNESS WHEREOF, the undersigned has hereunto executed this Amendment this day of August, 2008.

HWY 80, LLC,  
a Georgia Limited Liability Company.

By:  (Seal)  
Name: DAVID F. GREEN  
Title: Managing Member

Signed, Sealed and Delivered  
in the presence of:

  
(Witness)

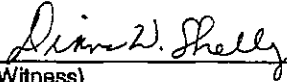
  
Notary Public  
My commission expires:  
[AFFIX NOTARY SEAL]

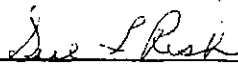
(SIGNATURES CONTINUED ON NEXT PAGE)

JVR ASSOCIATES, LLC,  
a Georgia Limited Liability Company.

By:  (Seal)  
Name: DAVID F. GREEN  
Title: Managing Member

Signed, Sealed and Delivered  
in the presence of:

  
(Witness)

  
Notary Public  
My commission expires:  
[AFFIX NOTARY SEAL]







Doc ID: 005751910002 Type: GLR  
Filed: 02/18/2009 at 04:38:00 PM  
Fee Amt: \$12.00 Page 1 of 2  
Bibb County Superior Court  
Dianne Brannen Clerk

BK 8028 PG 167-168

Record and Return to:  
Martin Snow, LLP  
Attn: Jenny Martin Stansfield  
240 Third Street  
P.O. Box 1608  
Macon, GA 31202-1608  
T0304.23514

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR TOBEE CREEK SUBDIVISION, MACON, GEORGIA**

**CROSS REFERENCE: DEED BOOK 6514, PAGE 121 and  
DEED BOOK 7935, PAGES 80-83  
CLERK'S OFFICE, BIBB SUPERIOR COURT**

STATE OF GEORGIA  
COUNTY OF BIBB

COMES NOW HWY 80, LLC, a Georgia limited liability company, (hereinafter referred to as "Developer") and files this Amendment to Declaration of Covenants, Conditions, and Restrictions for Tobee Creek.

WHEREAS, Developer filed a Declaration of Covenants, Conditions, and Restrictions for Tobee Creek on February 21, 2006 (hereinafter referred to as "Restrictive Covenants");

WHEREAS, Developer filed a First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tobee Creek on September 9, 2008; and

WHEREAS, Developer desires to amend the Restrictive Covenants in order to clarify and better reflect the transfer of any rights and obligations of JVR Associates, LLC as a former Developer, the contact information for the Association, and for other purposes.

NOW, THEREFORE, pursuant to the authority granted to Developer by those Restrictive Covenants, Developer hereby declares and amends the Restrictive Covenants as follows:

2

1.

ARTICLE 1: DEFINITIONS, Paragraph 15 is amended by deleting the paragraph in its entirety and substituting the following paragraph, to wit:

"1.15. "Declarant," HWY 80, LLC, a Georgia limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) Person entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

2.

ARTICLE 14: GENERAL PROVISIONS, Paragraph 11 is amended by deleting the paragraph in its entirety and substituting the following paragraph, to wit:

"14.11. Contact Information for the Association. Any and all past, present and future owners of lots within Tobee Creek Subdivision are hereby put on notice of the following contact information for the Association:

L.S. Management & Associates, Inc.  
Simone Justesen  
CFO/Account Representative  
Phone: (678) 272-2038  
Fax: (678) 272-2039  
Lee Campbell  
Phone: (404) 787-1886"

30 IN WITNESS WHEREOF, the undersigned has hereunto executed this Amendment this day of December, 2008.

HWY 80, LLC,  
a Georgia Limited Liability Company.

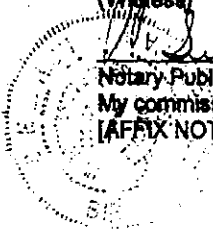
By: [Signature] (Seal)  
Name: DAVID F. GREEN  
Title: Managing Member

Signed, Sealed and Delivered  
in the presence of:

[Signature]  
(Witness)

[Signature]  
Notary Public

My commission expires: May 7, 2012  
[AFFIX NOTARY SEAL]



Doc ID: 010811290005 Type: GLR  
Recorded: 12/27/2013 at 02:32:00 PM  
Fee Amt: \$20.00 Page 1 of 5  
Bibb County Superior Court  
Erica Woodford Clerk

BK 9167 PG 15-19

AFTER RECORDING, RETURN TO:  
Travis C. Hargrove  
Page, Scrantom, Sprouse, Tucker & Ford, P.C.  
PO Box 1199  
Columbus, GA 31902

STATE OF GEORGIA

COUNTY OF Clarke

**QUITCLAIM DEED**

THIS INDENTURE ("Deed") made this 16<sup>th</sup> day of December, 2013 between SYNOVUS BANK, a Georgia charter bank ("GRANTOR"), and **TOBEE CREEK OWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation ("GRANTEE") (the words "GRANTOR" and "GRANTEE" to include their respective heirs, successors and assigns where the contexts requires or permits).

WITNESSETH: That, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency of which are hereby acknowledged, GRANTOR has bargained, sold, and by these presents does bargain, sell, remise, release and forever quitclaim unto GRANTEE, all of the right, title, interest, claim or demand which GRANTOR has or may have in and to the real property more particularly described on Exhibit "A," with all the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining (the "Property").

TO HAVE AND TO HOLD the said Property unto GRANTEE, so that neither GRANTOR, nor any person or persons claiming under GRANTOR shall at any time claim or demand any right, title, or interest to the Property.

THIS CONVEYANCE is expressly made subject to the following:

1. That certain Declaration of Covenants, Conditions and Restrictions for Tobee Creek recorded February 21, 2005 in Deed Book 6514 at Page 121, *et seq.*, in the Office of the Clerk of Superior Court of Bibb County, Georgia as it may be amended and That certain Declaration of Covenants, Conditions, and Restrictions recorded on January 1, 2009 in Deed Book 8001 at Page 102, *et seq.*, in the Office of the Clerk of Superior Court of Bibb County, Georgia, as it may be amended (the "Declarations");

2. All zoning ordinances, easements, reservations and restrictions of record affecting the Property; and

3. Any real property ad valorem taxes for the current year that are not yet due and payable; and

Each portion of the Property is hereby designated "Common Area," as defined in the Declaration.

GRANTOR does not, by the execution and delivery of any document or instrument executed and delivered in connection with the conveyance of the Property, make any warranty, express or implied, of any kind or any nature whatsoever with respect to the Property or any improvements thereon, and all such warranties are expressly disclaimed.

IN WITNESS WHEREOF, GRANTOR has caused this Deed to be executed under seal and delivered by its officer duly authorized thereunto as of the day and year first above written.

**GRANTOR:**

SYNOVUS BANK, a Georgia charter bank

By: *R. McKenzie Daniel* (seal)  
Name: R. M'KENZIE DANIEL  
Its: Special Assets Officer

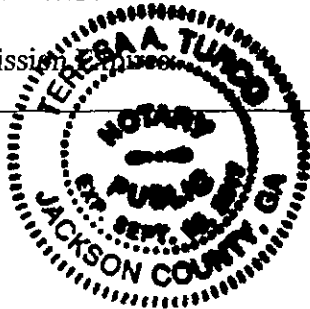
Signed, sealed, and delivered this 16<sup>th</sup> day of December, 2013, in the presence of:

*Julie B. Bishop*  
WITNESS Julie B. Bishop

*Terese A. Turco*  
NOTARY PUBLIC

[NOTARY SEAL]

My Commission





All those tracts or parcels of land lying and being in Land Lot and 243, 3<sup>rd</sup> District, Bibb County, Georgia, being more particularly described as follows:

Tax Parcel Number I010-0139, also known as 320 Willow Cove, Tobee Creed Subdivision, as shown on a Survey prepared for Wenjet, LLC dated May 9, 2005 recorded in Plat Book 91, Page 690, Bibb County, Georgia records;

Said parcel containing 2.38 acres, more or less.

SECTION A - SELLER'S INFORMATION (Do not use agent's information)				SECTION C - TAX COMPUTATION	
SELLER'S BUSINESS / ORGANIZATION / OTHER NAME TOBER CREEK OWNERS ASSOCIATION, INC.				Exempt Code If no exempt code enter NONE	NONE
MAILING ADDRESS (STREET & NUMBER) PO BOX 6438				1. Actual Value of consideration received by seller Complete Line 1A if actual value unknown	\$10.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY MACON, GA 31208 USA		DATE OF SALE 12/16/2013		1A. Estimated fair market value of Real and Personal property	\$0.00
SECTION B - BUYER'S INFORMATION (Do not use agent's information)				2. Fair market value of Personal Property only	\$0.00
BUYER'S BUSINESS / ORGANIZATION / OTHER NAME SYNOVUS BANK				3. Amount of liens and encumbrances not removed by transfer	\$0.00
MAILING ADDRESS (Must use buyer's address for tax billing & notice purposes) C/O KIMBERLY FRANKLIN PO BOX 120				4. Net Taxable Value (Line 1 or 1A less Lines 2 and 3)	\$10.00
CITY, STATE / PROVINCE / REGION, ZIP CODE, COUNTRY COLUMBUS, GA 31902 USA		Check Buyers Intended Use ( ) Residential ( ) Commercial ( ) Agricultural ( ) Industrial		5. TAX DUE at .10 per \$100 or fraction thereof (Minimum \$1.00)	\$0.00
SECTION D - PROPERTY INFORMATION (Location of Property (Street, Route, Hwy, etc))					
HOUSE NUMBER & EXTENSION (ex 285A)		PRE-DIRECTION, STREET NAME AND TYPE, POST DIRECTION			SUITE NUMBER
COUNTY BIBB		CITY (IF APPLICABLE)		MAP & PARCEL NUMBER N/A	ACCOUNT NUMBER
TAX DISTRICT	GMD	LAND DISTRICT	ACRES	LAND LOT	SUB LOT & BLOCK
SECTION E - RECORDING INFORMATION (Official Use Only)					
DATE 12/27/13	DEED BOOK 9167	DEED PAGE 15	PLAT BOOK	PLAT PAGE	

ADDITIONAL BUYERS  
None

4/5