

STATE OF GEORGIA  
COUNTY OF FULTON

**Return To:**

Rome & Associates, P.C.  
707 Whitlock Ave., Ste E-15  
Marietta, Georgia 30064  
(770) 428-6002

*Cross Reference: Deed Book 40722, Page 58.*

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(Space Above Reserved for Recording Data)

**AMENDED & RESTATED DECLARATION OF PROTECTIVE COVENANTS  
FOR THE PARKS AT DURHAM LAKES**

This Amended & Restated Declaration of Covenants, Conditions, and Restrictions (“Declaration”) is made on the date hereinafter set forth by The Parks at Durham Lakes Homeowners Association, Inc. (hereinafter referred to as the “Association”).

**WITNESSETH:**

*WHEREAS*, the Declaration of Protective Covenants for The Parks At Durham Lakes subdivision was filed at Deed Book 40722, Page 58, as amended, in the records of Fulton County, Georgia (hereinafter referred to as the “Original Declaration”).

*WHEREAS*, Article XII, Section 4 of the Original Declaration provides for amendment of the Original Declaration by written agreement of Owners representing at least a Majority of the total Association vote;

*WHEREAS*, the Owners wish to amend the Original Declaration, including submitting the Declaration to the provisions of the Georgia Property Owners Association Act, O.C.G.A. Sections 44-3-220, et. seq.;

*WHEREAS*, Owners representing at least a Majority of the total Association vote agreed in writing to this Amended and Restated Declaration, as affirmed to by the attached signature of the Association President, and attested to by the Association Secretary; and

*WHEREAS*, this amendment is not material with respect to first mortgagees in that it does not materially and adversely affect the security title or interest of any first mortgagee; provided, however, in the event a court of competent jurisdiction determines that this amendment does materially and adversely affect the security title or interest of any first mortgagee without such first mortgagee’s consent to this amendment, then this amendment shall not be binding on the first mortgagee so involved, unless such first mortgagee consents to this amendment; and if such consent is not forthcoming, then the provisions of the Declaration prior to this amendment shall control with respect to the affected first mortgagees;

*NOW, THEREFORE*, the Original Declaration is amended in its entirety (except as to the provisions incorporated by reference in Article II of this Restated Declaration) and the following is simultaneously substituted therefore:

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**THIS AMENDMENT TO THE DECLARATION HEREBY SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS’ ASSOCIATION ACT, O.C.G.A. SECTIONS 44-3-220, ET. SEQ.**

**CLOSING ATTORNEYS AND TITLE EXAMINERS MUST CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS/CHARGES DUE ON LOTS.**

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***Amended & Restated Declaration Of Covenants, Conditions And Restrictions  
For The Parks At Durham Lakes***

**Background Statement**

Now, therefore, the Association hereby declares that the property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all Persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every Owner of all or any portion thereof.

**Article I**  
**Definitions**

The following words, when used in this Declaration or in any amendment thereof (unless the context shall prohibit), shall have the following meanings:

- (a) “Act” shall mean the Georgia Property Owners’ Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.
- (b) “Association” shall mean and refer to The Parks at Durham Lakes Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.
- (c) “Board of Directors” or “Board” of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Georgia corporate law.
- (d) “Bylaws” shall refer to the Bylaws and any amendments thereof for The Parks at Durham Lakes Homeowners Association, Inc.
- (e) “Common Property” shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- (f) “Community” shall mean and refer to that certain real property and interests therein described in Article II, and/ or its Mortgagee or transferee, as provided in the Declaration, and such additions thereto as may be made by the Association (as provided in the Declaration) of other real property.
- (g) “Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association in the development of guidelines, restrictions, regulations and rules.
- (h) “Licensee” shall mean a person or business who holds an approved license to conduct an activity such as to operate a business i.e. landscaper.
- (i) “Lot” shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or could constitute, after the construction of improvements, a single dwelling site as shown on the plat for the Community, or amendments thereto, recorded in the land records of the county where the Community is located.

The Ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association, and "Lake Lot" shall mean a Lot containing any real property, which abuts, is appurtenant to or contains any portion of any lake within the Community.

(j) "Majority" means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%).

(k) "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(l) "Mortgagee" shall mean the holder of a Mortgage.

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

(n) "Owner" shall mean and refer to the record Owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(o) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(p) "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

(q) "Total Association Vote" means all of the votes attributable to members of the Association, but does not include those Lot Owners who have had their right to vote suspended pursuant to the Declaration.

## **Article II**

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

#### **Section 1. Property Hereby Subjected To This Declaration.**

All real property previously subjected to the Original Declaration is hereby included by reference thereto, and by the recording of this Declaration is subject to the covenants and restrictions hereafter set forth, and which is held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered. All said property is hereby submitted to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time.

#### **Section 2. Other Property.**

Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, the Association has the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

**Article III**  
**Association Membership and Voting Rights**

**Section 1. Membership.**

Every Person who is the record Owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event there are multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

**Section 2. Voting.**

Members shall be entitled to one (1) vote for each Lot owned for which assessments are paid. Since a Lot owner may be more than one person, if only one of those persons is present at a meeting of the association, or is voting by proxy, ballot, or written consent, that person shall be entitled to cast the votes pertaining to that Lot. However, if more than one of those persons is present, or executes a proxy, ballot, or written consent, the vote pertaining to that Lot shall be cast only in accordance with their unanimous agreement, and such consent shall be conclusively presumed if any one of them purports to cast the votes pertaining to that Lot without protest being made immediately by any of the other owners to the person presiding over the meeting or vote.

Any votes by Lot Owners who are not a natural person, shall be controlled by Section 44-3-224(b) of the Georgia Property Owners Association Act.

Members' voting rights are automatically suspended upon the non-payment of Association assessments, fines, or any other charges owed to the Association, which are more than 30 days delinquent. Members' voting rights may also be suspended for other violations of the governing documents for a set period of time, and subject to the same notice procedures as outlined for the levy of fines.

**Article IV**  
**Assessments**

**Section 1. Purpose of Assessment.**

The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**Section 2. Creation of the Lien and Personal Obligation for Assessments.**

Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association for each Lot owned: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration or Bylaws, and any charges enumerated in the below Sections of this Article IV.

Such assessments and charges shall, from the time the sums became due and payable, constitute a lien in favor of the Association on the Lot. The Association, in the Board's discretion, may, but shall not be obligated to, record a Statement of Delinquent Assessments & Notice of Statutory Lien on the County lien records. The lien provided for herein shall have priority as provided in the Act.

All such assessments, together with late charges, interest, costs, and reasonable attorney fees actually incurred (including post-judgment attorney fees), and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made.

Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Other than provided below, the grantee in a conveyance of a lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantor or grantee shall request a statement from the Association as provided below, such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the property Owner's Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

In the event that the holder of a first priority mortgage or secondary purchase money mortgage of record, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the Lot, or in the event that any other person acquires title to any Lot as a result of foreclosure of any such mortgage, such holder or other person and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot be subject to any lien for assessments or under any instrument chargeable to the Lot on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an assessment or assessments shall be deemed to be a common expense collectable from the grantor/prior Owner, and his or her estate, successors, successors-in-title, and assigns.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided by the Board, annual assessment shall be paid on the first day of the Association's fiscal year. If the Board so elects, assessments may be paid in installments and the Association may charge a reasonable service fee thereon. If any Owner is delinquent in the payment of any assessments or other charges the Board may require any unpaid installments for the remaining fiscal year to be paid in full immediately.

The obligation to pay assessments is an independent covenant running with the land. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

**Section 3. Certificate of Status Regarding Assessments/ Estoppel Letter.**

Any Owner, mortgagee, or a person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee as authorized under the Act as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

If the Association does not require payment of the fee as a prerequisite to providing the statement of account, or if the statement of account is requested within a period shorter than five (5) business days, the Association, or its agent, may subsequently charge a reasonable fee in an amount larger than the maximum amount set by the Act, including any late payment fees, or other related costs including but not limited to fax, overnight delivery, research fee, and reasonable attorney fees actually incurred. If the statement of account is requested within a period shorter than three (3) business days, the Association or its agent may also charge a rush fee.

The Association, or its agent, may charge for ancillary expenses unrelated to providing the statement of account, including but not limited to; title transfer fees, providing copies of the governing documents, and providing completed lender questionnaires. If any of the above-related fees are not paid in full the Association shall not be obligated to release any liens. The unpaid fees and costs shall be the responsibility of the Seller/Owner, shall be considered an assessment on the Lot, and may be collected as provided in these covenants for other assessments, including the filing of a Statement of Delinquent Assessments & Notice of Statutory Lien on the county records.

**Section 4. Computation of Assessments.**

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include the amount of the annual assessment, and shall also include a contribution to a long-term maintenance, repair and replacement reserve account in accordance with a capital budget separately prepared. Annual assessments shall be applied on a uniform and equal basis for each Lot. The Board shall cause the budget and the assessment to be levied against each Lot for the following year, and shall send a copy via U.S. mail to each member at least thirty (30) days prior to the end of the current fiscal year.

The assessment shall become effective unless disapproved at a physical meeting by a majority of the Total Association Vote within 30 days from the mailing of the budget and assessment amount. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

**Section 5. Initiation Fee.**

Each time a Lot is sold, or title is otherwise transferred to a third party (other than to the Owner's spouse; through inheritance; or by foreclosure), the Association may charge a one-time initiation fee in an amount to be set by the Board, but not to exceed the amount of the then current annual assessment, which may change from year to year. This fee shall be charged to any purchaser or transferee of a Lot; is in addition to the annual assessment; and shall not be considered an advance upon the payment of the annual assessment. A delinquent initiation fee may be collected in the same manner as other assessments, including the filing of a notice of lien.



### **Section 6. Special Assessments.**

In addition to the other assessments authorized herein, the Association may levy special assessments in any year for unexpected catastrophic losses, extraordinary maintenance, repair, and replacement costs, or for any other shortfall in the annual budget. The Board may impose the special assessment so long as the total amount of special assessments allocable to each Lot does not exceed in any one fiscal year an amount equivalent to the then annual assessment. Except as provided in Article VII, Section 2, hereof regarding damage & destruction of common property, any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a majority of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

### **Section 7. Specific Assessments.**

The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XII, Section 1, of this Declaration and the costs of maintenance performed by the Association, which the Owner is responsible for under Article V, Section 2, of this Declaration, shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses (except for those expenses related to maintenance and repair of items which are the maintenance responsibility of the Association as provided herein):

- (a) Expenses of the Association, which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots, which are benefited according to the benefit, received.
- (b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

### **Section 8. Effect of Nonpayment of Assessments: Remedies of the Association**

#### **(a) Late Charges, Interest and Other Collection Fees.**

Any assessments or installments thereof, which are not paid when due shall be considered delinquent, and shall incur a late charge equal to the greater of ten dollars (\$10.00) or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act. The delinquent assessments, including late charges, shall incur simple interest at the rate of ten percent (10%) per annum, or such higher amounts as may be authorized by the Act.

The Association shall also be entitled to costs of collection, including court costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees); the expenses required for the protection and preservation of the Lot, and the fair rental value of the Lot from the time of the institution of an action until the sale of the lot at foreclosure or until judgment rendered in the action is otherwise satisfied.

The Association may levy other fees provided or permitted by law, including charges for returned check. The Association may also file a Statement of Delinquent Assessments & Notice of Statutory Lien on the county lien records. If the Board permits payment of the annual assessments in installments, and any assessment or other charge is not paid in full within ten (10) days of the due date, then the Board may accelerate and declare immediately due and payable any remaining installments of the annual assessment.

**(b) Partial Payments.**

Partial payments shall not constitute payment in full, unless agreed to in writing by the Association. Any partial payments shall be applied in the following order of priority: (i) post-judgment reasonable attorney’s fees, costs, and expenses actually incurred; (ii) reasonable attorney’s fees, costs and expenses actually incurred; (iii) interest; (iv) late charges; (v) delinquent assessments; (vi) current assessments. Late charges may be assessed on delinquencies which are created by the application of current payments to outstanding delinquent assessments or charges. All of the foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment, including an offer of accord and satisfaction in settlement of a bona fide dispute. The Association may, but shall not be obligated to, allow any delinquent assessments, fines, or fees to be paid in installments, and may charge a reasonable service fee thereon.

**(c) Suit and Foreclosure of Lien.**

In the event that the assessment, fine or other charges, or any part thereof, remain unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien, and may recover all costs and reasonable attorney fees actually incurred up to the extent allowed by the Act and Georgia law. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property, and as provided by the Act. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, or convey the same.

**(d) Rent Deduction for Delinquent Assessments.**

When an Owner who is leasing a Lot fails to pay any assessment or any other charge against the Lot for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon demand by the Board, lessee shall pay to the Association all unpaid assessments and other charges payable during the remaining term of the lease and any other period of occupancy by the lessee; provided that lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association’s request.

All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If the lessee fails to comply with the Board's demand to pay assessments or other charges to the Association, lessee shall be personally obligated to pay to the Association all amounts authorized under the Declaration as if the lessee were the Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.

**Article V**  
**Maintenance**

**Section 1. Association’s Responsibility.**

The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property.

The Association shall maintain all entry features for the Community and private street signs. The Association shall also maintain all drainage detention and retention areas owned by the Association, to the extent such areas are not maintained on an ongoing basis by a local governmental entity, and there is hereby reserved to the Association a blanket easement upon, across, over, and under all property within the Community for access, ingress, and egress as necessary to permit the Association to perform such maintenance.

In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit all Owners. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

**Section 2. Owner's Responsibility.**

Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and the Declaration, Guidelines or Regulations, including but not limited to the following: exterior painting and staining; pressure washing as needed to remove exterior dirt and mold build-up; keeping all fencing in good repair and appearance; regular cutting, fertilizing and weed-control of lawns; and fresh mulching and weeding of bed areas. All improved Lots shall have grass ground cover. Gravel or other types of lawns are prohibited. Maintenance of Lots shall include areas up to the curb of the street whether or not such area is also within a governmental right-of-way. All maintenance responsibilities will be conducted in a manner and time of day that does not unreasonably disturb other Owners or Occupants.

If the Board of Directors of the Association determines that:

- (a) any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder; or
- (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense.

The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all such costs and expense, including any reasonable attorney fees actually incurred, and including any administrative fee on behalf of the Association, shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

### **Section 3. Party Walls and Party Fences.**

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction of the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## **Article VI** **Use Restrictions and Rules**

### **Section 1. General.**

This Article, beginning at Section 2, sets out certain use restrictions, which must be complied with by all Owners and Occupants. These use restrictions may be amended only in the manner provided in Article XII, Section 4, regarding amendment of this Declaration. The Board of Directors may, from time to time, without consent of the members, promulgate rules and regulations further defining and clarifying said use restrictions, including Architectural guidelines.

This authority shall include, but shall not be limited to, the right to limit the type and size of vehicles within the Community. The Board shall also have the authority to impose all other necessary parking regulations and to restrict the maximum noise levels of vehicles in the Community. A violation of Federal, State, County, or Municipal law on the part of any Owner, Occupant, or their Guests, or Lessees, that negatively impacts other Owners or the community, shall also be considered a violation of this Declaration if a regulation specifying the type of infraction has been adopted by the Board of Directors. The Board of Directors may also, from time to time, without consent of the members, promulgate rules and regulations regarding the use of the Common Property.

Such rules, regulations and use restrictions shall be sent to all Owners thirty (30) days prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants. *In the creation and enforcement of any covenant, bylaw, regulation, rule or guideline, the Association shall not discriminate against any person based upon the basis of race, religion, age, gender, disability, familial status, or any other federally protected classes.*

## **Section 2. Occupants & Use of Lots.**

No dwelling shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. For the purpose of the foregoing sentence, each dwelling shall be deemed to have been designed to accommodate safely a maximum of two (2) permanent occupants per bedroom, as 'bedroom' is designated and defined in the construction plans. In the enforcement of these restrictions, the Board may make exceptions allowing greater occupancy when considering such factors as the size of a single family, if such exceptions do not pose a safety risk. The Association shall not discriminate against any person based upon the basis of race, religion, age, gender, disability, familial status, or any other federally protected classes. All Lots shall be used for residential purposes exclusively. Home offices are allowed under the following conditions:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the building;
- (b) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers, or other business invitees, provided however this provision does not preclude the delivery of materials or items by United States Postal Service or by other customary parcel delivery services (UPS, FedEx, etc.);
- (c) the business does not increase traffic to and from the property; and
- (d) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage.

No other business or business activity shall be carried on or upon any Lot at any time except with the prior written approval of the Board, including child or adult care in return for compensation. The Board may regulate the number of yard or garage type sales allowed within the Community for a given period of time. Leasing of a Lot for residential purposes shall not be considered a business, or business activity, but shall be subject to the restrictions contained in Section 5 of this Article.

## **Section 3. Signs.**

No sign of any kind shall be erected by an Owner or Occupant within the Community without the written consent of the Board except the following: such signs as may be required by legal proceedings; not more than one (1) "For Sale" or "For Rent" sign consistent with the Community-wide Standard, having a maximum area of four (4) square feet; and standard size home security company signs or decals. "For Rent" signs may only be placed on the interior of a window.

Signs for political candidates or ballot proposals, may be allowed without the written consent of the Board, but only if the Board first passes guidelines and/or restrictions regulating the use of said signs. The Board may also pass further guidelines allowing temporary signs, such as those for "yard sales", which shall also comply with any local government requirements. The Board shall have the right to erect any reasonable and appropriate signs in the Common Areas.

## **Section 4. Vehicles & Parking.**

The designated areas for resident parking within the Community are the garage or driveway of the Owner's Lot. Garages shall not be used as storage to the extent of blocking the parking spaces within the Garage. Vehicles that belong to brief guests, or temporary visitors of fourteen days or less, shall be allowed to park in the street if parking is not available in the designated areas. Parking on Common Property shall be determined pursuant to regulation by the Board.

Owners and Occupants shall obey all posted speed limits and traffic control devices when driving vehicles within the community. Vehicles shall not be parked in front of or block access to fire hydrants located throughout the subdivision. The term “vehicles,” as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini bikes, scooters, go-carts, trucks, campers, buses, vans, automobiles, and any other motorized devices that are capable of being ridden.

No commercial vehicle, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat, boat trailer, or like equipment (as any of the preceding may be further defined by the Board) shall be permitted in the Community on a permanent basis, but may be temporarily parked in the driveway for the purpose of loading and unloading, not to exceed twenty-four (24) hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored in a garage. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.

Disabled and stored vehicles are prohibited from being parked within the Community except in a garage. For the purposes of this subparagraph, a vehicle shall be considered “disabled” if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered “stored” if it remains on the Property, other than in a garage, for fourteen (14) consecutive days or longer without prior written Board permission. The term “vehicles” as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, scooters, trucks, campers, buses, and automobiles.

#### **Section 5. Leasing Restrictions.**

In order to preserve the character of The Parks At Durham Lakes subdivision as predominantly owner-occupied and thus protect the value of Lots within the Community, and ensure that Lots qualify for eligibility regarding mortgage financing, insofar as the criteria is based upon percentage of owner-occupied Lots, the leasing of Lots is prohibited, other than as provided herein for certain Mortgagees and except as provided in this Section. Leasing of Lots is permitted only by: (1) a Grandfathered Owner or (2) an Owner who has received a written Leasing Permit or Hardship Leasing Permit from the Board as provided in this Section (3) the Association for any Lots owned by the Association. The Board shall have the power to make and enforce reasonable rules and regulations in order to enforce the provisions of this Section, including the establishment of a reasonable processing fee for requests to approve leasing of a Lot, and the right to impose fines constituting a lien upon the Lot being leased.

#### **(a) Definitions.**

**(i) “Assessments”** shall include (1.) annual assessments as defined in this Declaration. (2.) special assessments as that term is defined in this Declaration; and (3.) specific assessments, which are charges against a particular Lot that are established pursuant to the terms of the Declaration.

**(ii) “Effective Date”** the date on which this Amendment to the Declaration of Covenants, Conditions and Restrictions for The Parks At Durham Lakes is recorded in the County Records.

**(iii) “Leasing”** for the purposes of this Declaration is defined as the regular, exclusive occupancy of a Lot by any person other than the Owner or a spouse, child or parent of an Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, or gratuity.

**(iv) “Grandfathered Owner”** means an Owner of a Lot who is lawfully leasing his or her Lot on the Effective Date, and who has provided the Board, within thirty (30) days of the Effective Date, with a copy of the lease in effect on the Effective Date. Any Owner leasing a Lot on the Effective Date who does not provide a copy of the lease shall be in violation of the Declaration, and the Board may terminate such unauthorized lease and remove all unauthorized occupants, as provided in this Section.

A Grandfathered Owner shall continue to be allowed to lease only until the earlier of: (1) the date the Grandfathered Owner conveys title to the Grandfathered Lot to any other person (other than the Owner’s Spouse); or (2) the date that all current occupants of the Grandfathered Owner’s Lot vacate and cease to occupy the Lot. If the Grandfathered Owner and Tenant maintain compliance with all Covenants, By-Laws, and Rules of the Association, including timely payment of any Assessments, fines or other charges, a lease may be renewed with the same Lessees/Tenants, and the Grandfathered status will be renewed for the term of the new lease.

No Owner may be grandfathered for leasing if they are delinquent in paying their Assessments, fines or other charges, or if they have had more than one late payment of Assessments, fines or other charges in the previous twelve (12) months.

**(b) Leasing Permit.** Owners who want to lease their lots may do so only if they have applied for and received from the Board either a “Leasing Permit” or a “Hardship Leasing Permit”. The Board may establish conditions as to the duration and use of such permits consistent with this Section. All Leasing Permits and Hardship Leasing Permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners, including subsequent Owners of a Lot.

An Owner’s request for a Leasing Permit shall be approved if the number of current, outstanding permits issued plus Grandfathered Lots is less than ten percent (10%) of the total Lots at The Parks At Durham Lakes, and the Owner has occupied the Lot as his or her primary residence for at least twelve (12) months, and is not delinquent on any assessment, fine, or other charge owed to the Association; provided further, an Owner, other than a Grandfathered Owner, may only lease one Lot at any given time. Leasing Permits are automatically revoked upon the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner’s Spouse or through inheritance).

If the number of current Leasing Permits issued and Grandfathered Lots is more than ten percent (10%) of the total number of Lots, then no additional Leasing Permits shall be issued, except for Hardship Leasing Permits, until that number falls below ten percent (10%). Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit.

**(c) Hardship Leasing Permits.** If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the number of Hardship Leasing Permits which have been issued to other Owners, (iii) the Owner’s ability to cure the hardship, and (iv) whether previous Hardship Leasing Permits have been issued to this Owner. Hardship Leasing Permits shall be valid for a lease term not to exceed one (1) year. Hardship Leasing Permits shall be automatically revoked if during the term of the permit the Owner applies for and receives a Leasing Permit. Hardship Leasing Permits shall not be renewed. Therefore, any lease signed under a Hardship Leasing Permit must contain a provision stating that the lease is not renewable.

**(d) Leasing Provisions.** Leasing of Lots shall be governed by the following provisions:

**(i) Notice.** At least seven (7) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed written lease agreement. The Board shall approve or disapprove the form of said lease. If the form of the lease is disapproved, the Board shall notify the Owner of the action to be taken to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

**(ii) General.** Lots may be leased only in their entirety; no rooms, basements or fractions of Lots may be leased without prior written Board approval. All leases shall be in writing. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than twelve (12) months, but not more than twenty-four (24) months. Within ten (10) business days after executing a lease agreement, the Owner shall provide the Board with a copy of the lease, and the name and phone number of the lessee and all other people occupying the Lot, in addition to any other contact information requested by the Board. The Owner must provide the lessee copies of the Declaration, Bylaws, Architectural Standards, and Rules and Regulations of the Association. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

**(iii) Required Provisions.** Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant, and incorporation of the following language contained in Subsections (A) and (B) into the lease:

**(A) Liability for Assessments and Other Charges.** *Lessee agrees to be personally obligated for the payment of all assessments and all other charges against the Lot which become due during the term of the lease, including, but not limited to, fines which become due as a consequence of lessee's activities which violate provisions of the Declaration, Bylaws, Architectural Standards, or the rules and regulations of the Association. When an Owner who is leasing a Lot fails to pay any assessment or any other charge against the Lot for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon demand by the Board, lessee shall pay to the Association all unpaid assessments and other charges payable during the remaining term of the lease and any other period of occupancy by the lessee; provided that lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request.*

*All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If the lessee fails to comply with the Board's demand to pay assessments or other charges to the Association, lessee shall be personally obligated to pay to the Association all amounts authorized under the Declaration as if the lessee were the Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.*

**(B) Compliance with the Governing Documents and Enforcement Powers of the Association.** *If a Lot is leased or occupied in violation of this Section, the Association may bring an action against the lessee and/or the Owner for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or in equity. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.*

*The Lessee shall comply with all provisions of the Declaration, Bylaws, Architectural Standards and rules and regulations of the Association, and shall control the conduct of all other occupants*



*and guests of the leased Lot in order to ensure such compliance, and shall indemnify and hold the Association harmless for any such person's failure to comply. The Owner shall cause all occupants of the Lot to comply with the Declaration, Bylaws, Architectural Standards and the rules and regulations, and shall be responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are also liable.*

*If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, Architectural Standards or a rule and regulation of the Association, fines may be levied against the lessee and/or the Owner; and such a violation is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability, and to evict the lessee in accordance with Georgia law. The Owner and Lessee hereby further agree to hold harmless the Association, its Board of Directors, employees and agents if the Association exercises the powers herein granted to the Association.*

(e) **Rights of First Mortgages.** Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not impair the right of any first Mortgagee to:

- (a) foreclose or take title to the Lot pursuant to remedies contained in any Mortgage;
- (b) take a deed or assignment in lieu of foreclosure; or
- (c) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

#### **Section 6. Occupants Bound.**

All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of any Lot even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

#### **Section 7. Animals and Pets.**

No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the Owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets must be confined to a leash whenever they are outside a Lot. The Owner or Occupants shall pick-up any droppings left by their pet outside of the Owner or Occupant's Lot.

It shall be unlawful inside the Lot for the Owner or possessor of any animal to restrain or anchor an animal by means of a tether, chain, cable, rope or cord, unless the tether or other restraint is being held by a competent person. Occupants and Owners shall obey all governmental laws regarding pets and animals.

#### **Section 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 Lot. No Lot 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 upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. 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, shall be located, installed or maintained upon the exterior of any Lot unless required by law. The Board of Directors may pass regulations enumerating specific types and examples of nuisances.

**Section 9. Unsightly or Unkempt Conditions.**

The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community. Garbage receptacles shall be stored in the back yard, and out of view of the street. Garbage receptacles shall be removed from the street within 24 hours of garbage pick-up. No air-conditioner shall be installed in any window of any building located on any Lot, nor shall any air-conditioner be installed on any building located on any Lot so that the same protrudes through any exterior wall of such building.

**Section 10. Architectural Standards.**

No exterior construction, alteration, addition, or erection of any nature whatsoever (including, without limitation, fences, pools, tennis courts, exterior lighting, tree houses and play equipment) shall be commenced or placed upon any part of the Community, except such as is originally installed by the developer, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee (“ARC”). The ARC may be established such that it is divided into two subcommittees, with one subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. The Board may employ architects, engineers, or other Persons as it deems necessary to enable the ARC to perform its review.

The Board may promulgate written guidelines for the exercise of this review, after soliciting input from the ARC. The Board shall appoint the ARC, and may remove any member of the ARC, with or without cause.

The ARC may withhold approval for any reason, including purely aesthetic considerations; and shall be entitled to stop any construction in violation of these restrictions. If the Board of Directors is not serving as the ARC, an Owner may submit a written appeal to the Board from a decision of the ARC within 15 days of the denial. Any member of the Board or its designee or the representatives thereof shall have the right, during reasonable hours, to enter upon any Lot to inspect any Lot and any improvements thereon for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In the event the Board or its designee fails to approve or to disapprove such design and location within sixty (60) days after sufficient plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with, unless the automatic approval would be a violation of an express covenant. The ARC or Board are entitled to stop any construction in violation of these restrictions.

All activities commenced pursuant to plans, which have been deemed approved shall be consistent with such plans. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Board or its designee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner' successors-in-interest.

Notwithstanding the provisions above, any application for the approval of plans and specifications shall be deemed to be disapproved unless and until any and all delinquent assessments and other charges permitted by this Declaration have been paid current by the Owner submitting such plans and specifications.

**PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE BOARD, IT'S DESIGNEE, NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY THEREFORE, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER THE ASSOCIATION, THE BOARD, THE BOARD'S DESIGNEE, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM SHALL BE LIABLE FOR DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS.**

**EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST THE ASSOCIATION, THE BOARD, THE BOARD'S DESIGNEE, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.**

**Section 11. Satellite Dishes & Antennas.**

No exterior antennas, satellite dishes or multi-channel multi-port distribution service larger than one meter in length or diameter shall be placed, allowed, or maintained upon any portion of a Lot. All the above-referenced devices measuring 39.37 inches or less shall be installed in accordance with FCC rules and regulations, and shall not be placed in plain view from the street, unless such placement is the only positioning that allows for reasonable reception of a signal. However, the Board reserves the right to (but shall not be obligated to) erect a master antenna, satellite dish or other similar master system for the benefit of the Community.

**Section 12. Gardens. Basketball Goals. Etc.**

Grass, ornamental plants and shrubbery (and only the foregoing) may be planted in the front or side yard of any Lot. All other planting may be done only with prior written approval of the Board or its designee or in accordance with the guidelines previously established by the Board or its designee. Over seeding of fescue lawns and sodding of lawns with Bermuda or zoysia grasses shall not require prior approval pursuant to this section. No vegetable garden, hammocks, statuary, or recreational equipment may be placed, erected, allowed or maintained upon any Lot without the prior written consent of the Board or its designee. This provision shall include permanent or mobile basketball goals.

**Section 13. Tree Removal.**

No trees located on an Owner's Lot shall be removed without the express consent of the Board or its designee, except for diseased or dead trees as determined in writing by a professional arborist. Any replacement trees must be pre-approved in writing by the Association.

**Section 14. Lighting.**

Notwithstanding Article VI, Section 10 above, the following exterior lighting may be installed without the necessity of obtaining the prior approval of the Board or its designee: (a) seasonal decorative lights during a holiday season (which must be taken down within a time as determined by rule of the Board); (b) illumination of other than the front or side yards of a Lot; and (c) other lighting originally installed by the developer. Plans for all other exterior lighting must be submitted and approved in accordance with Article VI, Section 10 hereof. Decorative post lights will not be approved unless they conform to established street lighting.

**Section 15. Drainage.**

Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Lot may obstruct or re-channel the drainage flows after the location and installation of drainage swells, storm sewers, or storm drains. The Association reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. The Association hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 16. Sight Distance at Intersections.**

All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

**Section 17. Clotheslines. Garbage Cans. Woodpiles. Etc.**

All clotheslines, garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. Notwithstanding the foregoing, the Association reserves the right to provide and maintain a dumpster for the use of residents within the Community.

**Section 18. Subdivision or Merger of Lots.**

No Lot shall be subdivided or its boundary lines changed without the prior written approval of the Board or its designee, except that any two or more contiguous Lots shall have the right to cause such Lots to be combined together by furnishing the Board of Directors with a thirty (30) day written notice of the Owner's intent to do so. The new combined Lot shall thereafter be deemed to be a single Lot for all purposes of the Declaration, except that the amount of assessments shall be equal to the total assessments for which all of the Lots combined would have been liable had such merger had not taken place. Any type of merger, division, boundary line change, or replatting must also comply with applicable zoning regulations

**Section 19. Guns.**

The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types. The Association may use firearms as required for pest control.

**Section 20. Alternative Energy Devices.**

No artificial or man-made device which is designed or used for collection of or heating by solar energy, or other alternative energy devices shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee.

**Section 21. Fences.**

No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee. No fence shall be constructed or erected upon any Lot in any location other than entirely in the rear of building which is located on such Lot. The Board or its designee may issue guidelines detailing acceptable fence styles or specifications, but in no event may a chain link fence or hog wire fence be approved.

**Section 22. Exterior Colors & Interior Window Treatments.**

The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed, or maintained upon any Lot must be painted or repainted in a color as approved by the Board or its designee. All interior window treatments visible from the outside of a dwelling shall be limited to white or off-white materials in harmony with the Community-Standard, and bedding such as sheets or other coverings are explicitly prohibited.

**Section 23. Mailboxes.**

All mailboxes and mailbox posts shall be of a type and color as determined from time to time by the Board or its designee.

**Section 24. Detached Structures.**

No detached structure shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Board or its designee. All detached structures must be consistent in design materials and color with the dwelling on the Lot.

**Section 25. Entry Features and Street Signs.**

Owners shall not alter, remove or add improvements to any entry features or street signs on any Lot, or any part of any easement area associated therewith without the prior written consent of the Board or its designee.

**Section 26. Above Ground Pools.**

Above ground swimming pools shall not be permitted in the Community. The Board may pass rules and regulations allowing baby pools.

**Section 27. Garbage Collection Consolidation.**

The Board may, but is not required to, contract on behalf of the Association with a private trash company on an exclusive basis to pick up all usual and customary household garbage on a regular basis for all Lots, and if applicable, may contract with a private recycling company. The charges for the usual and customary garbage collection and/or recycling service shall not be a Common Expense, but instead shall be paid by each Lot Owner directly to the trash and/or recycling company.

**Section 28. Lake.** Use of any lake located within the Community or which may be made available for the use and enjoyment of Owners shall be restricted to Owners of Lake Lots on such lake; provided, however, if any part of the lake is located on Common Property, the lake may be used by any Owner, subject to the restrictions contained in this Section. No ice-skating, swimming, water skiing or boats powered by internal combustion engines shall be permitted on any lake. Fishing in any lake is permitted with such licenses as may be required by any governmental entity. Retaining walls and similar structures shall not be installed without the prior written approval of the Board or its designee.

Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the Community, and especially the lake, shall be permitted on any Lake Lot, without the prior written consent of the Board or its designee.

The restriction contained in *Article VI, Section 12, (Gardens, Basketball Goals, etc)* hereof relative to front and side yards shall apply to the entire yard (front, side and rear) of each Lake Lot. No docks shall be permitted on any lake except docks constructed with the prior written consent of the Board or its designee.

**Section 29 House Construction Restrictions.** Only one (1) dwelling may be constructed on any Lot, which shall not consist of more than two (2) stories not including a basement, even if the basement is partially above ground level. All dwellings shall be constructed as detached two-story dwellings containing an interior heated and cooled area of no less than twenty-five hundred (2,500) square feet and no more than forty-four hundred (4,400) square feet. All dwellings shall also be constructed with an attached garage, which includes a garage door that will totally conceal the opening to such garage.

## **Article VII** **Insurance and Casualty Losses**

### **Section 1. Insurance.**

The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article V, Section 1. hereof. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents.

The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). The Board shall also obtain 'directors and officers' liability insurance in the coverage amount of at least One Million Dollars (\$1,000,000.00).

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company authorized to do business in Georgia.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be cancelled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to other insurance coverage required by this Section, if the Association is self-managed, the Board shall obtain, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees, and other Persons handling or responsible for the Association's funds. Such coverage if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD").

## **Section 2. Damage and Destruction - Common Property.**

(a) **In General.** Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty allowing for any changes or improvements necessary to comply with applicable building codes. The Board of Directors shall have all enforcement powers specified in Article XII, Section 1, of this Declaration necessary to enforce this provision.

(b) Repair and Reconstruction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

### **Section 3. Damage and Destruction -Lots.**

The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris there from within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XII, Section 1 of this Declaration.

### **Section 4. Insurance Deductible.**

The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

## **Article VIII Condemnation**

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Lots subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VII, Section 2, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.



**Article IX**  
**Annexation of Additional Property**

Subject to the consent of the Owner thereof, and upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of the Superior Court of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

**Article X**  
**Mortgagee Provisions**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.**

An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), (therefore becoming an 'eligible holder'), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action, which would require the consent of a specified percentage of Mortgage holders.

**Section 2. No Priority.**

No provision of this Declaration or the Bylaws 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 Property.

**Section 3. Notice to Association.**

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

**Section 4. Amendments by Board.**

Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements, which necessitate the provisions of this Article or make any such requirements less stringent, the Board, or to the extent that changes in any local, State or Federal law add mandatory requirements affecting these covenants, then without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 5. Applicability of Article X.**

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

**Section 6. Failure of Mortgagee to Respond.**

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

**Article XI**

**Easements**

**Section 1. Easements for Encroachment and Overhang.**

There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

**Section 2. Easements for Use and Enjoyment.**

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

(ii) the right of the Association to automatically suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his Lot which is hereby provided for remains unpaid more than thirty (30) days; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, guidelines or rules and regulations not to exceed thirty (30) days beyond correction of the infraction;

(iii) the right of the Association to suspend services paid for as a common expense and being provided to a Lot or Lot Owner by the Association including but not limited to water, gas, electricity, and to the extent allowed by the FCC, any cable television, for any period during which any assessment against the Owner's Lot which is hereby provided for remains unpaid subject to the suspension standards and notice requirements imposed on the institutional providers providing such services to the subdivision, but not less than ten (10) days written notice sent via Certified Mail to the address of the Lot, or in the alternative to any mailing address provided by the Owner, with copy via regular first class mail to any Occupants of the Lot. All common expenses for suspension of or reconnection of services shall be an assessment and a lien against the Lot, and the services shall not be required to be restored until all amounts are paid in full.

(iv) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of the Association, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by the Association or any Lot Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default there under shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of the Association, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by the Association or any Lot Owner encumbering any Lot or other property located within the Community.) (No such Mortgage shall be effective unless an instrument agreeing to such Mortgage has been approved by Owners of at least two-thirds (2/3) of the Lots; and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the Association and Owners representing at least two-thirds (2/3) of the Total Association Vote.

(b) Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot if leased.

### **Section 3. Easements for Utilities.**

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

**Section 4. Easements for Association Maintenance.**

There is hereby reserved to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 5. Easements for Maintenance and Repair.**

There shall be reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping located on each Lot which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Lots and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair.

The Lot Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to the damage.

**Section 6. Easement for Entry.**

In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2 hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety reasons, which right may be exercised by the Board or its agents, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused by said entry. This right of entry shall include the right of the Board to enter to cure any condition, which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

**Section 7. Easements for Entry Features and Street Signs.**

There is hereby reserved to the Association an easement over and upon each Lot for ingress, egress, installation, construction, landscaping and maintenance of entry features, street signs and Community signs. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

**Section 8. Easements for Use and Maintenance of Lake: Pedestrian Easement.**

(a) There is hereby reserved to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as is reasonably required for maintenance of any lake, lakebed or shoreline that is located within the Community. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the property adjacent to the lake, reasonable steps shall be taken to protect the Community, and damage to the Community shall be repaired by the Person causing the damage at their sole expense.

(b) There is hereby reserved to the Association a perpetual pedestrian easement for access to any lake within the Community for the Benefit of the Association and Owners if and to the extent any such easement is shown on any plat for the Community recorded by the Association, or the prior Declarant, in the land records of the county where the property is located.

*(c) OWNERS ON BEHALF OF THEMSELVES AND THEIR OCCUPANTS, HEREBY ACCEPT NOTICE THAT THEY ENTER THE LAKE, RETENTION PONDS, DETENTION PONDS, OR OTHER GREEN AREAS AT THEIR OWN RISK, AND HEREBY WAIVE ANY CLAIM THEY MAY HAVE AGAINST THE ASSOCIATION, ITS DIRECTORS, OFFICERS, VOLUNTEERS, EMPLOYEES, AGENTS, OR ASSIGNS THAT ARISE AS THE RESULT OF ANY PERSONAL INJURY OR PROPERTY DAMAGE, AND RELEASE SAME FROM ALL LIABILITY.*

(d) The following restrictions apply to Owners, Occupants, or Guests regarding use of the lake area: Residents and Invited Guests Only (Guests must be accompanied by resident.) No Swimming; No Dumping; & No Feeding of Birds or other wildlife.

**Section 9. Easements for Common Drives.**

There is reserved a joint and reciprocal easement in perpetuity for vehicular and pedestrian traffic in, upon, over, and across those areas, if any, shown on any plat for the Community recorded by the Association, or prior Declarant, in the land records of the county where the Community is located as a common drive (or such similar or equivalent language as would indicate that such area is a common drive among two or more Lots) (hereinafter referred to as a "Common Drive"). These easements shall be for the benefit of any Owner of a Lot upon which a Common Drive is located and shall be for access to and ingress and egress to and from such Owner's Lot by such Owner, and his or her family members, invitees, and designees, in, upon, over, and across the Common Drive, or portion thereof, located on such Owner's Lot. Any Common Drive shall continue to be used for this purpose by the Owners of the Lots upon which such Common Drive is located and by the subsequent Owners and successors-in-title to such Lots. In connection with the reservation of these easements, it is acknowledged and agreed that the Owner of a Lot burdened by these easements will be required to utilize the easements for access to and ingress and egress to and from such Owner's Lot and that such easements are critical to the 'future use and enjoyment' of such Owner's Lot. No Owner shall be allowed to change, alter or diminish the rights of an Owner of a Lot burdened by these easements to the use and enjoyment of the Common Drive located on such Owner's Lot.

Each Common Drive shall be cleaned, maintained, repaired and replaced as a joint effort by the Owners of the Lots upon which such Common Drive is located. This responsibility shall be shared on an equal basis by each of said Owners, notwithstanding the respective use of the Common Drive by the Owners of the Lots upon which the Common Drive is located. In order to protect the value of the respective Lots and to insure the proper use and enjoyment of the respective Lots, the Owner of a Lot upon which a Common Drive is located shall have the full and unrestricted right to cause the cleaning, maintenance, repair and replacement to be made to the Common Drive located on such Owner's Lot as may be necessary to insure that such Common Drive is maintained in good, proper, and functional condition and appearance. The failure by any Owner of a Lot upon which such Common Drive is located to pay when due his or her portion of any such expense incurred by another Owner of Lot upon which such Common Drive is located for cleaning, maintenance, repair and replacement of such Common Drive shall be a violation of the covenants and restrictions set forth in this Declaration and such nonpaying Owner shall be liable to the Owners who performed such cleaning, maintenance, repair, and replacement for such amount plus costs and expenses, including reasonable attorneys fees actually incurred by such Owner in collecting said amount.

**Article XII**  
**General Provisions**

**Section 1. Right of Enforcement.**

*(a) Compliance.*

The Property shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply strictly with this Declaration, By-Laws, and any Association Rules, Regulations and Guidelines, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of the Declaration, By-Laws, and any Association Rules, Regulations and Guidelines. In addition to any rights the Association may have against an Owner's family, guests, tenants or occupants, as a result of such person's violation, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or occupants.

*(b) Fines, Suspensions, & Notices of Non-Compliance.*

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote and/or to use the Common Property for violation of any duty imposed under the Declaration, By-Laws, or any Association Rules, Regulations and Guidelines. To the extent any assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after becoming due, the Owner's and Occupant's rights to vote and use the Common Property shall be automatically suspended until all amounts owed are paid in full. However, nothing herein shall authorize the Association or the Board of Directors to deny ingress and egress to or from a Lot. The Association shall also have the right to record a Notice of Non-Compliance on the County records regarding any outstanding violations of the Declaration, By-Laws, or any Association Rules, Regulations and Guidelines.

*(c) Suspension of Services.*

In addition, if any assessment, fine or other charge is delinquent for thirty (30) days or more, the Association shall have the right upon thirty (30) days written notice, and in compliance with any requirements set forth in the Act, to suspend any utility services paid for as a Common Expense, until such time as the delinquent assessments and all costs incurred by the Association pursuant to this Section, including reasonable attorney fees actually incurred, are paid in full. Any costs incurred by the Association in discontinuing and/or reconnection any utility or other service, including reasonable attorney fees actually incurred, shall be an assessment against the Lot.

*(d) Application to Owner and Occupant.*

If any Occupant of a Lot violates the Declaration, By-Laws, or any Association Rules, Regulations and Guidelines, any suspensions may be imposed against the Owner and/or Occupant. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any Association Rules, Regulations and Guidelines shall not be deemed a waiver of the right of the Board to do so thereafter.

*(e) Failure of Enforcement.*

Notwithstanding the above, no right of action shall exist against the Association for failure of enforcement where: (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action therefore at law or in equity and has filed to do so.

*(f) Costs and Attorney Fees for Enforcement.*

In any enforcement action taken by the Association, including the abatement of any violation, the Association shall be entitled to any costs incurred against an Owner and/or Occupant, including reasonable attorney's fees actually incurred, whether or not a legal proceeding in law or equity is filed in connection with the violation, shall constitute a specific assessment against the Lot.

## **Section 2. Self-Help.**

In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Such action on behalf of the Association or its duly authorized agents shall not constitute a trespass. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice via certified mail of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed from common property after reasonable notice. All costs of self-help, including any administrative fee on behalf of the Association, interest in the amount of ten 10% percent and reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments. Any contractor, subcontractor, agent, employee, or other invitee of an Owner, who fails to comply with the terms of the covenants, rules, or guidelines, may be excluded by the Board from the Community, subject to the notice procedures contained in the Bylaws. In such event, neither the Association, the ARC, the Board, nor the officers, directors, members, agents, and employees of any of them, shall be held liable to any Person due to the exercising of the rights granted herein.

## **Section 3. Duration.**

The covenants and restrictions of this Declaration shall run with and bind the Properties perpetually to the extent provided for in the Act.

## **Section 4. Amendment.**

This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3rds) of the Total Association Vote. "Total Association Vote" means all of the votes attributable to members of the Association, but does not include those Lot Owners who have had their right to vote suspended pursuant to the Declaration. The Board may amend the Declaration without a vote of the Owners in order to comply with requirements of federal, state, or local law, including, but not limited to FHA regulations. If legal action is not instituted to challenge the validity of any amendment to the Declaration (including this restated amendment) within one (1) year of the recording thereof in the County land records, then any such amendment shall be presumed to be validly approved and adopted. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance, hereby agrees that the Declaration may be amended as provided for in this Section.

## **Section 5. Partition.**

The Common Property shall remain undivided, and no Lot Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

## **Section 6. Gender and Grammar.**

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

## **Section 7. Severability.**

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

**Section 8. Captions.**

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

**Section 9. Preparer.**

This Amended and Restated Declaration was prepared by Michael Rome, Esq. of Rome & Associates, P.C., 707 Whitlock Ave., Suite E-15, Marietta, Georgia 30064.

**Section 10. Indemnification.**

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

**Section 11. Books and Records.**

(a) Inspection by Members and Mortgagees.

Books and records of the Association may be inspected and copied pursuant to the provisions of Section 14-3-1602 of the Georgia Nonprofit Corporation Act by any member of the Association or by their duly appointed representative, and by holders, insurers, or guarantors of any first Mortgage.

(b) Rules for Inspection by Members and Mortgagees.

The Board shall establish reasonable rules with respect to:

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

(c) Inspection by Directors.

Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

(d) Privileged Documents.

Privileged documents, such as communications between the Association's counsel and the Board, or any documents sealed by order of a court, shall not be subject to inspection by the Association members. It shall be a breach of duty on the part of a Director to release any privileged documents or copies of privileged documents to members of the Association, or any other person, without written permission of the full Board.



**Section 12. Audit of Financial Records.**

At the annual meeting, the Owners, by a majority vote, may require that the financial records of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request.

**Section 13. Notice of Sale.**

In the event an Owner sells or otherwise transfers title to his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or transferee of the Lot and such other information as the Board may reasonably require.

**Section 14. Agreements.**

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

**Section 15. Variances.**

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

**Section 16. Implied Rights.**

The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**Section 17. Use of Recreational Facilities By Nonmembers & Suspension of Rights of Members.**

(a) The extent and duration of nonmember use and the fee to be charged therefore shall be determined solely by the Board. Nonmember user fees shall be paid to the Association. The Association shall not be liable for and is hereby held harmless from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case, the Association's sole remedy shall be to suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. The Association shall also not be liable for and is hereby held harmless from any personal injury or property damage caused by a nonmember entitled to use the Community recreational facilities.

The Association shall have the sole right to grant use rights to the Community recreational facilities to nonmembers. The provisions of this Section shall apply notwithstanding any contrary provisions in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, use restrictions and any amendments to any of the foregoing.

(b) The Association may suspend the rights of Owners or Occupants to use any of the recreational facilities or common areas, if said Owner or Occupant is delinquent in paying any Assessments or Fines to the Association.

## **Section 18. Dispute Resolution and Limitations on Litigation.**

### *A. Agreement to Avoid Litigation.*

The Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Community, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in paragraph "B." below ("Claims") shall be resolved using the procedures set forth below in lieu of filing suit in any court.

### *B. Claims.*

Unless specifically exempted below, all claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Community shall be subject to the below provisions.

Notwithstanding the above, unless all parties otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this Section:

Any suit by the Association against any Bound Party to enforce the provisions of Article IV (Assessments);

Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VI (Use Restrictions and Rules);

Any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

Any suit in which any indispensable party is not a Bound Party; and

Any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by this Section.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in this Section.

### *C. Mandatory Procedures.*

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

The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

Claimant's proposed resolution or remedy; and

That Claimant's desire to meet with Respondent to discuss in good faith ways to resolve the Claim.

*(b) Negotiation.* The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

*(c) Mediation.* If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties), Claimant shall have 30 additional days to submit the Claim to mediation to an independent agency providing dispute resolution services in the Fulton County area. Each Bound Party shall present the mediator with a summary of the Claim prior to the mediation session.

If Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date mediation was terminated ("Termination of Mediation"). Except as provided below in subparagraph (d), the Claimant shall then be entitled to file suit or initiate administrative proceedings on the Claim as appropriate.

Each Bound Party shall bear its own costs of mediation and each Party shall share equally all fees charged by the mediator.

*(d) Final and Binding Arbitration.* If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Official Code of Georgia Annotated, Section 9-9-1, et seq. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

This subsection (d) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Georgia. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Georgia. Each Bound Party shall bear its own costs and each Party shall share equally all fees charged by the arbitrator.

*(e) Allocation of Costs of Resolving Claims.* Subject to subparagraph (d) above, each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

Any award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

*(f) Enforcement of Resolution.* After resolution of any Claim, if any party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees actually incurred, and court costs.

**Section 19. Security.** NOTWITHSTANDING ANY PRIVACY WALLS, FENCES, ENTRY GATES, OR CAMERA SURVEILLANCE SERVING THE SUBDIVISION/PROPERTY, THE ASSOCIATION MAKES NO REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE EFFICACY OF SUCH STRUCTURES FROM A SAFETY OR SECURITY STANDPOINT OR THAT SUCH STRUCTURES MAY NOT BE COMPROMISED OR CIRCUMVENTED. EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION IS NOT A PROVIDER OF SECURITY AND SHALL NOT HAVE A DUTY TO PROVIDE SECURITY ON THE PROPERTY. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SECURITY SHALL LIE SOLELY WITH EACH OWNER. EACH OWNER, TENANT, OCCUPANT, GUEST AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION HAS MADE NO SUCH REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, OCCUPANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE PROPERTY AND COMMIT CRIMINAL ACTS, NOR THAT CRIMINAL ACTS AT THE SUBDIVISION/PROPERTY WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS.

**[SIGNATURES APPEAR ON NEXT PAGE]**

IN WITNESS WHEREOF, the foregoing Amendment is executed by the undersigned duly authorized representative of the Association on this \_\_ day of \_\_\_\_\_, 20 \_\_, and said representatives attest that after proper notice the Amendment was passed by written agreement of Owners representing at least a Majority of the total Association vote.

The Parks at Durham Lakes Homeowners Association, Inc.

\_\_\_\_\_  
BY: \_\_\_\_\_  
TITLE: President.

ATTEST:

\_\_\_\_\_  
SECRETARY

*Sworn to, signed, sealed and delivered  
before me on the \_\_ day of \_\_\_\_\_, 20\_\_.*

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

**Prepared By:**  
*Michael Rome, Esq.*  
GA Bar #: 613945