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04/10/2007 11:37 AM
BK:10115 PG:23-47
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HENRY COUNTY

Prepared by and after recording return to:

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STATE OF GEORGIA
HENRY COUNTY

**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS
FOR
CLARK MEADOWS
HENRY COUNTY, GEORGIA**

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS made and published this 3rd day of April, 2007, by **HUDGINS COMMUNITIES, INC.**, a Georgia corporation (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of all that tract or parcel of land lying and being in the Henry County, Georgia, and being more particularly described on Exhibit "A" attached hereto and by reference incorporated herein and made a part hereof, (hereinafter referred to as the "Property"); and

WHEREAS, Declarant has developed on the Property, a subdivision known as "**CLARK MEADOWS**" (hereinafter referred to as the "Subdivision"); and

WHEREAS, Declarant desires to enhance the value and provide for the uniform development of the "Subdivision";

NOW THEREFORE, the Declarant hereby declares as follows:

That the Property shall be held, conveyed, encumbered, used, occupied and improved subject to the following covenants, restrictions and easements, all of which are in furtherance of a plan for Subdivision, improvement and sale of real property and are established for the purpose of enhancing the value, desirability and attractiveness of the real property and every part thereof. The covenants, restrictions and easements set forth herein shall run with the land and shall be binding on all parties having or acquiring any right, title or interest therein or thereto, and shall, subject to the limitations herein provided, inure to the benefit of each AOwner@ (as hereinafter defined) and his/her heirs, successors and assigns.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE PROPERTY TO THE TERMS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. § 44-3-220, ET SEQ.

**ARTICLE I
DEFINITIONS**

The following terms, when used herein, shall have the meaning ascribed thereto below:

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1.0 **"Architectural Control Committee" or "ACC"** shall mean the committee established pursuant to Article VI to supervise compliance with the Design Standards.

1.1 **"Articles"** shall mean and refer to the Articles of Incorporation of the "Association", as amended from time to time.

1.2 **"Assessment"** shall mean and refer to an Owner's share of the charges, fees or other expenses from time to time assessed against the Owner by the Association in the manner herein provided.

1.3 **"Assessment Year"** shall mean the calendar year.

1.4 **"Association"** shall mean "Waterpointe Unit Four Homeowners Association, Inc.", a Georgia non-profit corporation, or any successor thereof, charged with the duties and obligations of the Association hereunder, its successors and assigns.

1.5 **"Board"** shall mean the Board of Directors of the Association, duly elected and acting pursuant to the Articles and By-Laws.

1.6 **"By-Laws"** shall mean and refer to the By-Laws of the Association which have been adopted by the Board, as they may from time to time be amended.

1.7 **"Commencement Date"** shall mean the date designated by Declarant, upon which "Lots" become subject to Assessments.

1.8 **"Common Property"** shall mean all real and all personal property in which the Association owns an interest for the common use and enjoyment of all the "Owners". Said interest or interests may include, without limitation, estates in fee, estates for a term of years, usufructs or easements.

1.9 **"Declarant"** shall mean and refer to: (a) HUDGINS COMMUNITIES, INC. or (b) any successor-in-title to HUDGINS COMMUNITIES, INC. in all or some portion of the Property provided such successor-in-title shall acquire such property for purposes of development and sale, and provided further, that in a written instrument, such successor-in-title is expressly designated as the Declarant hereunder by the grantor of such conveyance, which grantor shall be the Declarant hereunder at the time of such conveyance.

1.10 **"Design Standards"** Set of standards established by the Declarant and/or ACC that employs a theme and uniformity of Structures and landscaping for the Subdivision.

1.11 **"Lot"** shall mean a parcel of land designated as a lot on a "Plat" of the Subdivision that is recorded of record in the office of the Clerk of the Superior Court of Henry County, Georgia.

1.12 **"Mortgage"** shall mean any and all instruments used for the purpose of encumbering real property in the Subdivision as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.13 **"Mortgagee"** shall mean the holder of a Mortgage.

1.14 **"Owner"** shall mean the record owner (including Declarant), whether one or more persons or entities, of the fee simple title to any Lot upon which a permanent home has been constructed and is occupied in accordance with this Declaration; provided, however, that were fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered

the Owner. "Owner" shall further mean and include Declarant until one (1) year after the sale of the last Lot proposed to be developed on the Property described in Exhibit "A" hereto attached.

1.15 "Plat" or "Plats" means the subdivision plat recorded in the Office of the Clerk of Superior Court of Henry County, Georgia.

1.16 "Property" means the property described in Exhibit "A" hereto attached and by reference made apart hereof and any property subsequently added thereto by amendment and made a part hereof.

1.17 "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.18 "Structure" means (a) any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not of limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvements to such Lot; (b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and (c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of the Section 1.18 applies to such change.

1.19 "Subdivision" means the Property subdivided, having a plat made thereof, and approved by Henry County, Georgia, and any property subsequently added thereto by amendment.

1.20 "Supplementary Declaration" shall mean an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restriction or easements on the land described therein.

1.21 "Two-Thirds Vote" means a favorable vote by at least two-thirds (2/3rds) of the votes which are represented in person or by proxy and voting at a meeting of Owners duly held in accordance with the provisions of the By Laws of the Association and this Declaration.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

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

2.2 Other Property. Only the real property described in Exhibit "A" is hereby made subject to this Declaration; provided, however, by one or more Supplementary or amended Declarations, Declarant has the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

**ARTICLE III
COMMON PROPERTY****3.1 Conveyance of Common Property:**

3.1.1 The Declarant may from time to time convey real and personal property to the Association or grant easements to the Association to be held by the Association as Common Property. The Association hereby covenants and agrees to accept from the Declarant, and shall be deemed to automatically accept, all such conveyances of Common Property.

3.1.2 It is contemplated by the Declarant that the Declarant may convey to the Association Common Property for scenic and natural area preservation, recreational use and landscape maintenance. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this Declaration at any time prior to conveyance of such Common Property to the Association.

3.1.3 In addition to the property described in Section 3.1.2, the Declarant may convey to the Association in accordance with this Section 3.1.3 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Subdivision.

3.1.4 Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property, future Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any third party, municipality or other governmental body, agency or authority

3.2 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property, which right and easement shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions as it may from time to time establish. The right of the Association to permit persons who are not Owners to use and enjoy part or all of the Common Property, includes the right of the Association to establish different categories of rights to use the Common Property, including varying rights for residents of the Subdivision, of adjoining subdivisions, and of others. The right and easement of enjoyment granted or permitted by this Section 3.2 is subject to suspension by the Association as herein provided.

3.3 Rights of the Association. The rights and privileges conveyed in Section 3.2 hereof shall be subject to the right of the Association acting through the Board to: (a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property; (b) borrow money for the purpose of carrying out the activities of the Association, and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the Association's property including Common Property and revenues from Assessments, user fees and other sources; provided, however, that during the period after the time when the Declarant's right to appoint members of the Board has expired, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest on or in Common Property constituting real estate without approval by the Declarant and a two-thirds vote; (c) grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system; (d) dedicate or transfer all or any part of the Common Property or interests therein to any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds vote, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority; (e)

charge reasonable fees in connection with the admission to and use of its facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes; (f) suspend, pursuant to Section 4.5, the voting rights of any Owner and the right of enjoyment granted or permitted by Section 3.2; (g) sell, lease or otherwise convey all or any part of its properties and interests therein; and (h) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof.

3.4 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant may designate in the deed of conveyance or easement that such real property is to be Common Property, and further may, subject to the applicable zoning ordinances of Henry County, Georgia, designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds vote and consent of the Declarant, be used for any different purpose or purposes.

3.5 Delegation of Use. Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By Laws, his right to use and enjoy the Common Property.

ARTICLE IV THE ASSOCIATION

4.1 Purposes, Powers and Duties of the Association. The Association has been formed as a non-profit corporation for the sole purpose of performing certain functions for the common good and general welfare of the inhabitants of the Subdivision. To the extent necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code; and (b) shall have the power and duty to exercise all of the duties and obligations of the Association as set forth in this Declaration.

4.2 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration or the By Laws of the Association.

4.3 Classes of Membership; Voting Rights. The Association shall have two classes of voting membership: Class A and Class B.

(a) Class A.

The Class A Members shall be all those persons holding an interest required for membership in the Association as specified in Section 4.2, except for those persons who are Class B Members. Until such time as the Class A Members shall be entitled to full voting privileges, as hereinafter specified, the Class A Membership shall be a non-voting membership except as to such matters and in such events as are hereinafter specified.

The Class A Members shall be entitled to full voting privileges on the earliest of the following dates to occur: (i) the date which Declarant may so designate by notice in a writing delivered to the Association; or (ii) December 31, 2017. Before the earliest of these dates to occur, the Class A Members shall be entitled to vote only on any proposal of merger, consolidation or dissolution of the Association or on any other matter for which it is provided by law that approval of each and every class of membership of the Association is required.

When entitled to vote, Class A Members shall be entitled to cast one vote for each lot in which they hold an interest required for membership. When more than one person holds such interest in any lot, all such persons shall be Members. The vote for such lots shall be exercised as they among

themselves determine, but in no event shall more than one vote be cast with respect to any such lot shall not be counted.

(b) Class B.

The Class B Member shall be the Declarant. Class B Membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters and in all events. At such time as Class A Members shall be entitled to full voting privileges, as provided in paragraph (a) above, the Class B Membership shall automatically terminate and cease to exist, and Declarant shall become a Class A Member insofar as it may own lots in the Subdivision.

4.4 Board of Directors.

4.4.1 The affairs of the Association shall be managed by the Board.

The number of Directors and the method of election of Directors shall be as set forth in the By Laws.

4.4.2 The Board of Directors is empowered to borrow funds for the operation, maintenance and further development of property titled in the name of the Association. Said loans may be paid from the assessments levied under Article IV hereof.

4.4.3 The Board of Directors may authorize the payment of salaries to its members and the reimbursement of out-of-pocket expenses and travel expenses of its members that are incurred for the benefit of the Association.

4.5 Suspension of Membership. The Board may suspend the voting rights of any Owner and the right of enjoyment of the Common Property of any person who (a) shall be subject to the "Right of Abatement" (as defined in Section 12.2) by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards within thirty (30) days after having received notice of the same pursuant to the provisions hereof; (b) shall be delinquent in the payment of any Assessments; or (c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of the Common Property. Such suspension shall be for the balance of the period in which such Owner or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 4.5, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

4.6 Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

4.7 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the Owners shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles and the By Laws.

4.8 Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles or in the By Laws, the Declarant hereby retains the right to appoint and remove any member or members of the Board and any officer or officers of the Association until such time as the first of the following events shall occur (a) until one (1) year after the sale of the last lot of all proposed lots to be developed on the Property described in Exhibit "A" hereto attached and any property subsequently added thereto by amendment and made a part hereof; or (b) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section 4.8, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots. A special meeting of the Association shall be called at such time. At such special meeting, the Owners shall elect a new Board which shall undertake the

responsibilities of the Board and Declarant shall deliver to the newly elected Board the books, accounts and records, if any, which Declarant has kept on behalf of the Association. Each Owner, by acceptance of a deed to, or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section 4.8. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

4.9 Meetings. No meeting of the Association can take place unless at least one officer of the Declarant is present and empowered to vote in behalf of the Declarant. Until the Declarant has surrendered its voting rights, any action taken by the Association at which an officer of the Declarant was not present and empowered to vote shall be void.

ARTICLE V ASSESSMENTS

5.1 Covenant for Assessments and Creation of Lien and Personal Obligation. The Declarant, to the extent that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows: (a) to pay to the Association the annual Assessments which shall be levied by the Association pursuant to this Declaration against all Lots owned by him; (b) to pay to the Association any special Assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him; (c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such Assessments are made to secure payment of such Assessments and any interest thereon as provided herein and costs of collection, including reasonable attorney's fees; (d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior; and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (A) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (B) to finance the construction, repair or alteration of Structures; (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any Assessment thereafter assessed; and (f) that all annual and special Assessments (together with interest thereon as provided in this Declaration and costs of collection including reasonable attorney's fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by him; provided, however, that such personal obligation for delinquent Assessments shall not pass to an Owner's successor-in-title unless expressly assumed by such successor.

5.2 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the inhabitants of the Subdivision, including, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions, the enforcement of the Design Standards, the construction and maintenance of the Subdivision entrance signage, the construction and maintenance of any perimeter fencing erected by the Declarant, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

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5.3 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual Assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

5.4 Initiation Fee and Annual Assessment. The Initiation Fee of the Association shall be One Hundred and 00/100 Dollars (\$100.00). The Assessment for the first year shall be Four Hundred and 00/100 Dollars (\$400.00) per year. After the first year, the Annual Assessment will be set for each subsequent year by the Declarant. Unless otherwise stated, said annual assessment shall be due and payable within thirty (30) days from the date the annual assessment is set. Annual Assessments and Initiation Fees may be amended by Declarant at any time without notice to the Owners or members of the Association.

5.5 Special Assessment for Capital Improvements. In addition to the annual Assessments authorized by this Article V, the Association may levy, in any Assessment year and with such frequency as the Association shall deem necessary, special Assessments for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property, provided that any such special Assessment shall have been approved by a two-thirds vote.

5.6 Assessment Procedure.

5.6.1 Upon the termination of the rights of the Declarant pursuant to Section 12.4, the Board shall, at their discretion, be authorized to determine the Annual Assessment for each Assessment Year. The Annual Assessment shall not exceed ten percent (10%) of the Annual Assessment from the previous year. However, if the Board determines that the Annual Assessment must be increased by greater than the 10%, they must show the purpose for the increase complies with 5.2, and receive a Two-Thirds Vote from the Association in order to implement said increase. The Board shall also establish the date during the Assessment Year on which the annual Assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual Assessment and the Due Date. The annual Assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual Assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special Assessments which may be levied in accordance with the provisions of this Article V.

5.6.2 All Owners shall be given written notice by the Board not less than ten (10) nor more than thirty (30) days in advance of any meeting of the Owners at which the Board shall propose taking action pursuant to Section 5.5. For the purposes of this Section 5.6, the presence of Owners or of proxies entitled to cast fifty percent (50%) of all of the votes shall constitute a quorum. If the quorum required by this Section 5.6.2 is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement.

5.7 Uniform Rate of Assessment. Both annual and special Assessments must be fixed at a uniform rate for all Lots.

5.8 Effect of Nonpayment of Assessment. Any annual Assessment which is not paid on or before the Due Date and any special Assessment which is not paid on or before the date set by the Board shall bear interest after the Due Date with respect to annual Assessments or the date set by the Board with respect to special Assessments, at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish; provided, however, that in no event shall the Board have the power to establish a rate

of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an Assessment, the Board may declare any remaining balance of the Assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorney's fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

5.9 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all Assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all Assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

5.10 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no Assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

ARTICLE VI ARCHITECTURAL CONTROL

6.1 Architectural Control Committee - Creation and Composition.

6.1.1 The Architectural Control Committee ("ACC") shall consist of not less than three (3) nor more than five (5) individuals; provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, all members of the ACC shall be appointed by the Declarant until the last lot of all proposed to be developed on the property described in Exhibit "A" has been developed and sold or any property subsequently added thereto and made a part hereof. Upon the expiration of Declarant's right to appoint members of the ACC, all members of the ACC shall be appointed by the Board. All costs of operating the ACC shall be borne by the Association.

6.1.2 Each initial member of the ACC shall be appointed for a term expiring on December 31, 2012. Thereafter each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of Section 6.1.1, be filled by the Board at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declarant (or Board if at such time the Board has the right to appoint members of the ACC).

6.2 Purposes, Powers and Duties of the ACC. The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval: (a) as to whether the proposed installation, construction or alteration complies with the Design Standards and is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Subdivision; and (b) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power

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and duty to improve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

6.3 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the ACC.

6.4 Operations of the ACC.

6.4.1 Meetings. The ACC shall hold regular meetings at least once every three (3) months or more often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed or hand delivered to each member thereof at his residence or usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein the act of the majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The ACC shall maintain both a record of notes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Owners. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a regular meeting of the ACC, may be taken without a meeting if written consent, setting forth the action taken, shall be signed by all the members of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

6.4.2 Activities. (a) The ACC shall adopt and promulgate the Design Standards and shall, as required, make findings, determinations, rules, and orders with respect to the conformity with the Design Standards or plans and specifications submitted to the ACC for approval pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration; and (b) any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization; subject, however, to review and modification by the ACC on its own motion or appeal by application to the ACC as provided in Section 6.4.2. Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of the majority of the members of the ACC with respect to such matter shall be final and binding.

6.5 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless two (2) sets of plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including, but not limited to: (a) a site plan showing the location of all proposed and existing Structures on the Lot, including building setbacks, open space, driveways, walkways and parking spaces, including the number thereof; (b) a floor plan; (c) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all backfilling and landscaping are completed; (d) specifications of material, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and (e) plans for landscaping and grading.

6.6 Approval of Plans and Specifications. The ACC will make the final approval decision in writing based on the siting, exterior elevations, materials and details. Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, one copy of such plans and specifications bearing such approval, in writing, together with any conditions imposed, will be returned to the applicant submitting the same to be retained as the "Applicant's Approved Set." Any changes or modifications made to the Applicant's Approved Set must be first submitted for the ACC's approval prior to construction of those changes. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any such Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter; such plans and specifications, as approved, and any conditions attached to any such approval.

6.7 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following: (a) failure of the Applicant to include such information in such plans and specification as may have been reasonably requested; (b) the failure of such plans and specifications to comply with this Declaration or the Design Standards; or (c) any other matter which, in the sole judgment of the ACC, would adversely affect the Subdivision or any additions thereto.

6.8 Inspections. The ACC shall have the right to enter upon each lot for the purpose of making appropriate inspections of matters that are within its jurisdiction. Such inspections and entries can be done without notice. The Owner specifically waives any claims for damages that the Owner may have that occur as the result of the entry or inspection of the lot and improvements contained thereon.

6.9 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Association shall have the rights set forth in Article XII.

6.10 Certification of Compliance.

6.10.1 Upon completion of the installation, construction or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such complies with such plans and

specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

6.10.2 Any Certificate of Compliance issued in accordance with the provisions of this Section 6.10.2 shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article; provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of the Structures or the workmanship, or to represent or warrant to anyone the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment.

6.10.3 The issuance of a certificate of Compliance with respect to any Structure shall in no way be construed to certify to any party that such Structure has been built in accordance with any applicable rule or regulation.

6.11 **Fees.** The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to this Declaration. The fee shall be established from time to time by the ACC and published in the Design Standards.

6.12 **Nondiscrimination by ACC.** The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age, national origin or veteran status. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age, national origin or veteran status.

ARTICLE VII GENERAL COVENANTS, RESTRICTIONS AND DESIGN STANDARDS

7.1 **Residential Use.** Each lot shall be used for residential purposes exclusively. No Lot shall be used for any commercial purposes whatsoever. No trade or business of any kind may be conducted in or from a Lot, except that the Owner residing in the residence on a Lot may conduct business activities within the residence so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Subdivision; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Subdivision; (g) does not constitute a nuisance or hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Subdivision, all as may be determined in each case in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provisions of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full time or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity. The Board may issue rules regarding permitted business activities.

7.2. **Recorded Plat.** No dwelling shall be constructed closer to any street, side property line or rear property line than the set back lines as shown on the recorded plat of subdivision revealed in Plat Book 47, Pages 71 through 73, Clerk of Superior Court records, Henry County, Georgia. No dwelling shall be constructed which would conflict with those zoning notes and conditions as shown on the recorded plat of subdivision revealed in Plat Book 47, Pages 71 through 73, Clerk of Superior Court records, Henry County, Georgia. All restrictions and easements shown on Plat are hereby incorporated into this Declaration. In the event of any conflict between the Plat and the covenants,

restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

7.3 Building Type and Accessory Structures. No dwelling unit shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling unit not to exceed three stories in height. With the exception of a single-family dwelling unit, no structures of any type, including, without limitation, storage buildings, outbuildings or detached garages may be erected, altered, placed or permitted to remain on any lot without the prior written consent of Declarant. Accessory structures shall be limited to pool houses and two car garages permitted only in the side or rear yard of the Lot.

7.4 Building Materials. No lumber, brick, stone cinder block, or other fabricated masonry block units, concrete, or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot except for purposes of construction on such Lot and shall not be stored on such Lot for longer than that length of time reasonably necessary for the construction in which to be used.

7.5 Pre-built Homes. No mobile homes, house trailers, modular homes, "log houses" or "moved in houses" shall be erected or placed on any Lot.

7.6 Motor Vehicles and Parking. No motor vehicles, including but not limited to, automobiles, trucks, tractors, or buses, which are not in usable, operating condition shall be allowed to remain on any Lot. No Lot shall be used as a yard for storage of junk or junked cars. Under no circumstances shall any Lot be used in such a way that a nuisance is created. No outside vehicle repairs, other than normal maintenance, will be allowed. Boats, trailers, tractors, buses, trucks with a load capacity of one (1) ton or more and vans (excluding mini-vans and sport utility vehicles used as passenger vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes and containing visible evidence of commercial use (such as tool boxes, tool racks, business decals or signs, or other visible business evidence), and vehicles with commercial writings on their exteriors are also prohibited from being parked on any Lot. No vehicles shall be parked along the street during daylight hours unless in case of emergency

7.7 Yard. Each Lot must be fully sodded on the front, side and rear yards. The grounds of each Lot shall be maintained in a neat and attractive condition. Upon failure of any Owner to so maintain Lot, Association or its authorized agents may, after ten (10) days notice to such owner, enter upon such lot and have grass and other vegetation cut when, and as frequently as necessary in its judgment, and may have dead trees, shrubs, and other vegetation removed there from. Entry onto Lot for aforementioned purpose shall only occur between the hours of 7 a.m. and 6 p.m. Lot Owner shall be personally liable to Association for the cost of any cutting, clearing and maintenance described above, and the liability for amounts expended for such cutting, clearing and maintenance shall be a permanent charge and lien upon such lot, enforceable by Association in any appropriate proceeding at law or equity.

7.8 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats and other household pets may be kept provided they are not kept for breeding or maintained for any commercial purpose, and maintained only on pet owner's Lot. No pit bulldogs or other dogs determined in the sole discretion of the Association to be dangerous dogs may be brought onto or kept on the Property at any time by any Owner or guest of an Owner. Any pet which endangers the health of any Owner of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the Association's sole discretion, must be permanently removed from the Property upon seven (7) days' written notice by the Association.

7.9 Garbage and Refuse Disposal. No Lot or Common Area shall be used or maintained as a dumping ground for rubbish. Grass clippings and other landscape stash shall not be allowed to accumulate on any lot. Trash, garbage, grass clippings, landscape stash or other waste shall not be

kept except in sanitary containers and all such sanitary containers shall be located or screened so as to be concealed from the view of the neighboring lots and streets. All incinerators or other equipment for the storage or disposal of such material shall be kept in a sanitary condition.

7.10 Noise and Odor. No substance or material of any nature whatsoever shall be placed or kept on any lot, nor shall any activity carried on upon any lot or building on said lot which will emit foul or unpleasant odors or that will cause such noise that may disrupt the peace, quiet, comfort, enjoyment or serenity of other Lot Owners or Property. Any noise that can be heard inside a neighboring house with the windows and doors closed will be considered too loud. Exceptions to this shall include only equipment used in the normal maintenance of residential yards, which are permitted between the hours of 8 a.m. and dusk.

7.11 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. The use or discharge of firearms anywhere in the Subdivision is strictly prohibited. The term "firearm" includes, but is not limited to, "B-B" guns, pellet guns, paintball guns, and other guns of any type, regardless of size.

7.12 Temporary Structures. No structure of a temporary character, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently.

7.13 Fences. No fence or fencing type of barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without the prior written consent of the Declarant or ACC. A six (6) foot wooden shadow-box style privacy fence in the rear of the Lot shall be allowed without prior written consent. All wood fences must be stained or clear-coated with natural color paint. All fences must be maintained in a neat and clean condition by the Owner. No chain link fences are allowed on any Lot. The ACC may issue additional guidelines detailing acceptable fence styles or specifications. The Declarant and the Association reserves the right to erect any type of fence around the perimeter of the Subdivision, including across any Lot or Common Area that serves as the perimeter of the Subdivision. The Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Subdivision as may be deemed appropriate by the Board or as necessary to satisfy the requirements of any law, regulation or government entity or for the health and safety of residents.

7.14 Mailboxes. All mailboxes shall conform to U.S. Postal Regulations and be approved by Declarant.

7.15 Gardens, Play Equipment, Pools, etc. Only live ornamental plants and shrubbery shall be allowed between the rear of the dwelling and any street line. Any vegetable garden, play equipment, or pools must not be visible from any adjoining street. All swings, gazebos, arbors or similar structures must be approved by the ACC.

7.16 Hobbies and Activities. The pursuit of hobbies or other activities, including, but not limited to 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 on any part of a Lot. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and bicycles may be kept on the patio or deck serving the Lot.

7.17 Clotheslines. Outside clotheslines shall not be permitted.

7.18 Air Conditioners and Fans. Window air conditioning units shall not be allowed. All dwellings must have central heating and air conditioning units. No electric fans may be used in windows or doors that are visible from the street.

7.19 Signs. No signs of any kind shall be displayed to the public view on any Lot; provided, however, each Lot shall be allowed to have (i) one professional sign having an area of not more than three (3) square feet for the sole purpose of advertising the Property for sale or rent, and (ii) one professional sign of a security service having an area of not more than one (1) square foot; provided, further that during the three (3) years immediately following the date that these covenants are filed of record, any such sign advertising the Property for sale or for rent or any security sign shall be approved by the Declarant. This paragraph shall not be applicable to (i) signs used by the Declarant (or by a builder with the approval of the Declarant) to advertise the Property, or portions thereof, for sale until the Property is fully developed and houses have been constructed on all the Lots in the Development, or (ii) signs required by Henry County or other governmental authorities, or (iv) signs required by law in connection with legal proceedings. Signs that are deemed slanderous or demeaning toward any Owner, in the sole discretion of the Association, shall not be allowed on any Lot or any structure on said Lot.

7.20 Exterior Lighting. No exterior lighting visible from the street on which the residence fronts shall be permitted that might interfere with the operation of a motor vehicle, or the privacy of a neighbor, without written approval from the Declarant or Association.

7.21 Satellite Dishes and Radio Antennas. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and regulations. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal.

7.22 Utilities. All utilities provided to any dwelling shall be installed underground from the public right of way to the dwelling.

7.23 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the ACC.

7.24 Drainage. Catch basins, retention ponds, detention ponds and drainage easement areas are for the purpose of controlling the natural flow of water only. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without the prior written consent of the ACC.

7.25 Hazardous Materials. No hazardous materials may be used, generated, stored, or disposed of, discharged or released on, above, or under the Subdivision, except in compliance with all applicable laws, regulations, ordinances and permits. "Hazardous materials" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, petroleum, oil, or any petroleum, oil, or any petroleum by-product as defined as a hazardous substance under any applicable federal, state, or local laws, regulations or ordinances whether existing as of the date of this Declaration, previously enforced or subsequently enacted. Each Owner shall: (a) disclose to the Board or its designee all hazardous materials proposed to be stored, used or generated in the Subdivision; and (b) permit inspection by the Board or its designee of those portions of a Lot where hazardous materials are stored, used or generated.

ARTICLE VIII LEASING

8.1 Definition. "Leasing," for purposes of the Declaration, is defined as the regular,

exclusive occupancy of a Lot by any person or persons other than the Owner; provided, however, leasing shall not include exclusive occupancy by the spouse, child or parent of an Owner and shall not include the occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence. If an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, manager or member of such limited liability company, partner of such partnership, beneficiary or other designated agent of such trust, or agent of such other legal entity shall be deemed an Owner of such Unit for purposes of this Article. Such person's designation as an Owner of such Unit pursuant to this Article shall terminate automatically upon the termination of such person's relationship with the entity holding record title of the Unit.

8.2 Leasing Provisions. Leasing shall be governed by the following provisions:

8.2.1 Notice. At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the proposed lease, the name, address, and home and business telephone numbers of the proposed lessee and the names of all other people occupying the Lot, the Owner's address other than at the Lot, and such other information as the Board may reasonably require.

8.2.2 General. Lots may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases unless approved in writing by the Board. No transient tenants may be accommodated in a Lot. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. All leases shall be for a period of at least six months, except with written Board approval. The Lot Owner must provide the tenant copies of the Declaration, Bylaws, and Association rules and regulations, and the lease form shall provide that the Owner has done so.

8.2.3 Liability for Assessments and Compliance With Declaration, Bylaws, and Rules and Regulations. Any lease of a Lot in the Subdivision shall be deemed to contain the following provisions, whether or not expressly therein stated, and 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 a lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

8.2.4 Liability for Assessments.

(a) Lessee agrees to be personally obligated for the payment of all assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(b) When a Lot Owner who is leasing his or her Lot fails to pay any assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, however, 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 Board'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 lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required to make such payments to the Association if lessee were the owner of the premises during the term of the agreement and any other period of occupancy by lessee.

8.2.5 Compliance with Declaration, Bylaws, and Rules and Regulations.

(a) Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests in order to insure compliance with the foregoing. Lessee acknowledges that the violation by lessee or any occupant living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule and regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, if a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of the lessee's failure to do so. Unpaid fines shall constitute a lien against the Lot. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

(b) Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by lessee, any occupant, or any person living with lessee is deemed to be a violation of 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 hereby delegates and assigns to Peachtree Villages- Phase I Subdivision Association, Inc., acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(c) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities and other amenities.

**ARTICLE IX
ANNEXATION OF ADDITIONAL PROPERTY**

9.1 Unilateral Annexation by Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject additional real property to the provisions of this Declaration. Any annexation shall be effective upon the filing for

record of an amendment or Supplementary Declaration.

9.2 Other Annexation. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) Two-Thirds Vote, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in 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 owner of the property being annexed and the President of the Association whose signature shall be attested by the Secretary of the Association and any such annexation shall be effective only upon the filing for record of such amendment or Supplementary Declaration unless a later effective date is provided therein.

9.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration unilaterally at any time without prior notice and without the consent of any person, for the purpose of removing certain portions of the Subdivision then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Subdivision desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Subdivision.

ARTICLE X MORTGAGEE PROVISIONS

10.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, 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 Subdivision or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

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

ARTICLE XI
EASEMENTS, ZONING AND OTHER RESTRICTIONS

11.1 **Easements.**

11.1.1 Declarant hereby expressly reserves to the Declarant, and its successors and assigns as Declarant, forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not of limitation, the following: (a) the erection, installation, construction and maintenance of wires, lines, and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities; (b) the erection, installation, construction and maintenance of storm-water drains, catch basins, retention ponds, detention ponds, drainage swells, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function; (c) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; (d) the planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature; and (e) maintenance of entrance monuments. It is anticipated that increased storm water runoff across downstream lots will result from construction of impervious surfaces on lots. Neither Declarant, nor its successors and assigns, shall have any liability to any Owner due to increase flow or increased velocity of surface water resulting from approved construction on a Lot.

11.1.2 No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

11.2 **Easement Area.** The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or the Plat relating thereto.

11.3 **Easement for Entry.** The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Association.

11.4 **Easement for Entry Features.** There is hereby reserved to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Property on which entry features and similar streetscapes are located. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and similar streetscapes and the right to grade the land under and around such entry features.

11.5 **Zoning and Private Restrictions.** None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulation of any governmental body. In the event of any

010115 0042

conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

ARTICLE XII ENFORCEMENT

12.1 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by: (a) the Declarant so long as it is an Owner; (b) the Association; and (c) each Owner, his legal representatives, heirs, successors and assigns.

12.2 Right of Abatement.

12.2.1 In the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, the Association shall have the "Right to Abatement."

12.2.2 The "Right of Abatement," as used herein, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason and such actions are carried out in accordance with the provisions of this Section 12.2.2, and with the costs thereof, including the costs of collection and reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by law or eighteen percent (18%) per annum to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of this Declaration. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only: (a) such liens for taxes or other public charges as are by applicable law made superior; (b) the liens created under Article IV; and (c) all deeds to secure debt given to secure a loan the proceeds of which are used (i) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (ii) to finance the construction, repair or alteration of Structures.

12.3 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restriction by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

12.4 Collection of Assessments and Enforcement of Liens. Any Assessments which are not paid when due shall be delinquent. Any Assessment due for a period of thirty (30) days shall incur a late charge of Ten Dollars (\$10.00). In the event that the Assessment remains due and unpaid for a period

010115 0043

of sixty (60) days, the Association, through the Board, may institute suit to collect such amounts or to foreclose its lien. Each Owner, by his acceptance of a deed to a Lot, vests in the Association or its agents the right and power to bring actions against him 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 improvements of real property. The lien provided for in this Article shall be in favor of the Association, acting on behalf of the Owners, shall have the power to bid in the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the Assessment provided for herein by non-use of the Common Property or abandonment of his Lot.

12.5 No Waiver. The failure of the Declarant, the Association, the Owner of any Lot, or his legal representative, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE XII DURATION AND AMENDMENT

12.1 Duration. The Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of the county in which the Property is located, after which time this Declaration and the Restriction shall be automatically renewed for successive periods of ten (10) years; provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the Office of the Clerk of the Superior Court of Henry County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by Two-Thirds Vote.

12.2 Amendments by Declarant. So long as Declarant owns any of the property described in Exhibit "A" hereto attached and any property subsequently added thereto by amendment and made a part hereof, Declarant may unilaterally amend this Declaration for any purpose by an instrument in writing filed and recorded in the Office of the Clerk of the Superior Court of the county in which the Property is located, without the approval of any Owner, Mortgagee or the Association. Each Owner, by acceptance of a deed or other conveyance to a Lot agrees to be bound by such amendments and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instrument relating to the Subdivision. Notwithstanding the foregoing, Owners hereby covenant and agree to promptly execute such amendment if requested by Declarant or if otherwise required by the applicable jurisdiction.

12.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 12.2 hereof, shall be proposed and adopted in the following manner: (a) notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Owner; (b) at such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or the Owners. Such amendment must be approved by a two-thirds vote; provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee; and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, every amendment must be approved by Declarant; and

(c) the agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided the Declarant does not have the right to approve such amendment, the sworn statement of the President and any Vice-President or the Secretary of the Association attached to or incorporated the amendment executed by the Association, which sworn statement shall state unequivocally that the Agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

12.4 Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions hereunder and under the By Laws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Subdivision for development and sale and no longer has the right to unilaterally annex additional property to the Subdivision as provided herein and a certificate of occupancy has been issued for a unit on each Lot in the Subdivision; or (b) the date of recording by Declarant in the real estate records of the county where the Subdivision is located of a written instrument terminating all of Declarant's rights hereunder.

ARTICLE XIII HUD COMPLIANCE

13.1 VA/HUD Approval. As long as the Declarant has the right to appoint and remove the officers and/or directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring or the U.S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in the Subdivision the following actions shall require the prior approval of the VA and/or HUD as applicable: annexation of additional property to the Subdivision, except for unilateral annexation by Declarant as provided herein; dedication of Common Property to any public entity; merger, consolidation or dissolution of the Association; and material amendment of the Declaration, Bylaws or Articles of Incorporation.

ARTICLE XIV MISCELLANEOUS

14.1 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

14.2 Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

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

14.3 Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

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

14.5 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.

14.6 Notices. All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to the Declaration, whether made by the Declarant, the Association, an Owner, or any person, shall be in writing. All such notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents shall be deemed to have been duly given or made if either delivered personally or mailed by Certified Mail, Return Receipt Requested, addressed to the parties, as the addresses set forth below:

Declarant: Hudgins Communities, Inc.
 125 Westridge Boulevard
 McDonough, GA 30253

Owners: Each Owner's Address as registered with the Association in accordance
 with the By-Laws or, if no address has been registered, at the Owner's
 Lot.

Any such notice, request, objection, waiver, rejection, agreement, approval, disclosure or consent shall be deemed received by the party to whom addressed on the date appearing on the return receipt therefor. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been received by the other party shall constitute receipt of the notice, demand or request sent. Any item delivered by personal delivery shall be deemed received on the date of the personal delivery.

14.7 Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability. Neither the board, the directors, the officers of the Association, the ACC, nor the Declarant shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever of such board, directors, officers, ACC or Declarant, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Owners shall indemnify, defend and hold harmless each of the board, directors, officers, ACC, Declarant, and its respective devisees, legatees, heirs, executors, administrators, legal representatives, successors and assigns, in accordance with the provisions of the By Laws. Nothing herein contained shall make responsible or subject to liability any successor to the Declarant by operation of law or through purchase of the Declarant's interest in the Property (or any part thereof) at foreclosure, sale under power, or by deed in lieu of foreclosure, for any act, omission or matter occurring or arising from any act, omission or matter occurring, prior to the time such successor succeeded to the interest of the Declarant.

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

14.9 Constructive Notice. Each Owner, by his acceptance of a deed or other conveyance of a Lot, acknowledges for himself, his heirs, legal representatives, successors and assigns, that he is bound by the provisions of this Declaration.

14.10 Binding Effect. This Declaration shall be binding upon the undersigned, their heirs, administrators, successors and assigns. Said Declaration shall run with the title to the property described in Exhibit "A" and any subsequent property that is added hereto by amendment.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and affixed its seal as of the day and year first above written.

DECLARANT:

**HUDGINS COMMUNITIES, INC., a
Georgia corporation**

By: [Signature] (L.S.)
GERALD HUDGINS, President

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

[Signature]
Public Notary
Notary Public, Henry County, GA
My Commission Expires
Sept 23, 2011

SEAL AFFIXED

As Owners of Lots in Clark Meadows Subdivision, we agree to accept this Declaration and have our
Lots subject to this Declaration.

SEAL AFFIXED

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

[Signature]
Public Notary
Notary Public, Henry County, GA
My Commission Expires
Sept 23, 2011

**HUCO CONSTRUCTION, LLC a
Georgia limited liability company**

By: [Signature] (L.S.)
JEREMY P. CROSBY, MEMBER

SEAL AFFIXED

BOOK PAGE

010115 0047

Exhibit "A"

Description of Property

All that tract or parcel of land, lying and being in Land Lots 50 and 79 of the 5^h District, Henry County, Georgia, known as Clark Meadows Subdivision, as shown on Final Subdivision Plat of Clark Meadows Subdivision, prepared by R.M. Boyd, Ga. R.L.S. #2227, of R.M. Boyd & Associates, dated February 1, 2007, filed for record at Plat Book 47, Pages 71 through 73, Henry County, Georgia records. The description of the property as contained on said plat of survey is incorporated herein by reference and made a part hereof.