

**STATE OF GEORGIA**  
**COUNTY OF PIKE**  
**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR**  
**ASHLEY GLEN SUBDIVISION, PHASE II**

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**THIS DECLARATION** made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2019, by ASHLEY GLEN HOMEOWNERS ASSOCIATION, herein further referred to as AGHOA.

W I T N E S S E T H:

WHEREAS, AGHOA desires to provide for (i) the proper development and improvement of the Property as a single family residential subdivision know as Ashley Glen Subdivision, Phase II, (ii) the enhancement of the property values therein and (iii) for the further purpose of preserving and protecting the natural, scenic beauty and landscape and open condition of certain portions of the Property and towards that end, AGHOA further desires AGHOA subject the Property, together with such additions as may hereafter by made thereto to the easements, covenants and restrictions, charges and liens as hereinafter provided:

WHEREAS, AGHOA has deemed it desirable, for the efficient preservation of the values in said community, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

NOW, THEREFORE, for and in consideration of the aforesaid recitals, the grants and conveyances herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the AGHOA declares the Property and such additions thereto as may be hereafter be made pursuant to Article II hereof, is and shall be held, conveyed, transferred, sold, mortgaged leased, occupied and used subject to the covenants, conditions, restrictions, easements, charges and liens as hereinafter set forth.

## ARTICLE I

### DEFINITIONS

**Section 1. Definitions.** As used herein, the following terms shall have the following meanings:

(a) Association: shall mean and refer to the Ashley Glen Homeowners Association, Inc., a Georgia non-profit corporation, its successors and assigns.

(b) Board: shall mean and refer to the Board of Directors of the Association.

(c) Community Property: shall individually and collectively, as the context may require, mean and refer to the Recreational Property and the Open Space.

(d) Developer: shall mean and refer to any home builder who, in each instance, hereafter acquires a Lot for the purpose of constructing a single-family residence thereon.

(e) Lot(s): shall mean and refer to any improved or unimproved plot of land upon which is constructed or proposed to be constructed a single-family residential dwelling, as such Lots are shown on the Plat.

(f) Owner shall mean and refer to the record owner, whether one or more Persons of the fee simple title to any Lot which is a part of the property, but excluding those having such interest merely as security for the performance of an obligation.

(g) Open Space: shall mean any and all unimproved land hereafter owned by the Association for the common use and enjoyment of the Owners.

(h) Person: shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(i) Plat: shall mean and refer to that certain Revised Final Plat of Ashley Glen Phase II.

(j) Subdivision: shall mean and refer to the Ashley Glen Subdivision, Phase II, as depicted on the Plat, together with the facilities and improvements thereon and such future additions made pursuant hereto.

(n) Supplementary Declaration: shall mean and refer to any declaration of easements, covenants and restrictions which may be recorded by AGHOA, which extends the provisions of this Declaration to a Parcel and contains such complementary provisions for such Parcel as are required by this Declaration.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

**Section 1. Existing Property.** The Property shall be held, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to this Declaration.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** Every Owner who is a record owner of a residence which is subject to this Declaration shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any residence which is subject to this Declaration and shall pass automatically to an Owner's successor-in-title to the residence.

**Section 2. Voting Rights.** The Association shall have voting membership comprised of members who shall be all Owners, and shall be entitled to one vote for each dwelling owned. When more than one Person holds an interest in any dwelling, all such Persons shall be members, subject to the limitation on voting rights as hereinafter provided. The vote for such dwelling shall be exercised as they among themselves determine and shall advise the Secretary of the Association prior to any meeting of the Association.

## ARTICLE IV

### PROPERTY RIGHTS

**Section 1. Leases.** No Lots shall be leased by an Owner.

**Section 2. Lots.** Each Lot shall for all purposes constitute real property which shall be owned in fee simple. Each Owner shall be entitled to the exclusive ownership and possession of his Lot, subject to the provisions of this Declaration. Lots shall not be subdivided, and the boundaries between the Lots shall not be relocated, unless the

relocation is approved by at least two-thirds (2/3rds) of the Owners and their first mortgagees.

## **ARTICLE V.**

### **COVENANT FOR MAINTENANCE AND CAPITAL IMPROVEMENT ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of a dwelling, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual general assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, including reasonable attorney's fees, shall be a charge and a continuing lien upon the dwelling against which each such assessment is made. Each such assessment, together with interest thereon as periodically established by the Association, late charges, costs of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such dwelling at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The general assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the residents of the Property and the costs and expenses incident to the operation of the Association, including without limitation the maintenance and repair of the properties and facilities located on the Community Property, the maintenance of services furnished by the Association, the purchase of insurance by the Association, the repair and replacement of improvements on the Community Property and payment of all taxes and insurance premiums and all costs and expenses incidental to the operation and administration of the Association.

**Section 3. Computation.** 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 may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessment to be levied against each dwelling for the year (or any portion thereof in the case of the initial budget) to be delivered to each member at least thirty (30) days prior to the due date for payment of the assessment (or the first installment thereof). The assessment shall become effective unless disapproved at a meeting by two-thirds (2/3rds) of the Owners voting at a meeting. Notwithstanding the foregoing, however, in the event the Owners disapprove 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 4. Special Assessments.** In addition to the annual assessments authorized above, the Board may levy, in any assessment year, special assessments applicable to that year 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 and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Article V and the costs of maintenance performed by the Association which the Owner is responsible for under this Article V shall be deemed to be a special assessment. The Board may also specifically assess dwellings for the following Association expenses:

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

**Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast two-thirds (2/3rds) of all the votes of each class of membership shall constitute a quorum. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6. Rate of Assessment.** Annual and special assessments shall be fixed at a uniform rate for all dwellings and may be collected on a monthly basis.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all dwellings on the first day of the month of the calendar year following the conveyance of the first dwelling containing an occupied dwelling by a Developer to a Person other than the Developer. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Developer shall not be responsible for assessments on Lots not containing an occupied dwelling. The Board shall fix the amount of the annual assessment against each dwelling at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to each Owner subject thereto. The due dates shall be established by the Board, and, unless otherwise provided, the Association shall collect each month from the Owner of each dwelling one-twelfth (1/12) of the annual assessment for such Lot. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified dwelling have been paid. A properly executed certificate of the Association as to the status of assessments on a specified

dwelling is binding upon the Association as of the date of its issuance. All payments shall be applied first to the costs of collection, if any, (including attorney's fees), then to late charges, then interest and then to delinquent assessments.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.**

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum legal rate per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's dwelling, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a dwelling, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage foreclosure on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with the foreclosure of said lien. 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 for the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community Property, abandonment of his dwelling or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

**Section 9. Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed or security deed representing a first lien on said property. Sale or transfer of any dwelling shall not affect the assessment lien. However, the sale or transfer of any dwelling pursuant to foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such dwelling from liability for any assessments thereafter becoming due or from the lien thereof. All other persons acquiring liens or encumbrances on any dwelling after the Declaration shall have been recorded in the applicable real property records of Pike County, Georgia shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not consent is specifically set forth in the instruments creating such liens or encumbrances.

**Section 10. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Community Property; (c) all properties exempted from taxation by state or local governments upon the terms and to the extent

of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens and no Owner may waive or otherwise exempt himself from liability for the assessments provided herein, including, by way of illustration, but not limitation, abandonment of the dwelling. 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 By-laws, 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 or 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.

## **ARTICLE VI.**

### **CONSTRUCTION**

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

(a) All single family residential buildings or any other structure, whether temporary or permanent, shall be placed only within the setback lines as depicted on the Plat.

(b) Prior to the commencement of any construction of a single family residence on a Lot, all such construction plans and specifications shall be submitted to AGHOA Board of Directors for its approval. Such plans and specifications shall include, but not limited to descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans and specifications, building permits and samples of materials and colors as it may reasonably request showing the nature, kind, shape, height, width, color, materials, location and other essential features of the proposed construction) (collectively the Construction Plans and Specifications). The Board of Directors for AGHOA may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed construction. If Board of Directors for AGHOA or its consultants fail to approve the Construction Plans and Specifications within thirty (30) days of their submission, Construction Plans and Specifications shall be deemed approved by AGHOA Board of Directors.

(c) The Construction Plans and Specifications shall comply with the following requirements:

(i) Each single-family residence shall contain a garage containing space for not less than two (2) automobiles, side entry required;

(ii) The exterior facia of any single-family residence shall contain hardi-plank siding, and shall not contain less than thirty percent (30%) brick or stone;

(iii) Single family residence may be constructed on a slab, provided a slope of not more than eight (8) feet of cut or fill material is used;

(iv) Each dwelling shall contain not less than (i)1,800 square feet of heated/cooled area on the first finished floor level along with two (2) bedrooms and two (2) bathrooms;

(v) No fence may be constructed on any Lot except (i) along the common Lot line of a Lot extending from a line perpendicular to the rear exterior building wall of a single family residence to the rear of the Lot, and must be constructed of wood, wrought iron or black-coated vinyl chain link. Any deviation must be approved through AGHOA Board of Directors.

(vi) No more than fifty percent (50%) of the trees on any Lot may be removed;

(vii) All lawns within the front yards of a Lot shall be sodded grasses extending from the curb line of any street contiguous to any Lot to within four (4) feet of the front building wall, side yard and to rear dripline of a single-family residence;

(viii) All driveways, sidewalks and pedestrian aisles located within a Lot shall be constructed of concrete or other materials approved by AGHOA Board of Directors, in conformity with the recommendations of a licensed soils engineer approved by AGHOA Board of Directors, which design shall require the installation of a suitable base and surfacing with an asphaltic concrete or concrete-wearing material; and

(viii) No dwelling shall be of a height greater than two (2) stories, exclusive of basement and attic;

(ix) Architectural shingles as roofing required;

(x) Full wrap gutters, no less than 5”;

## **Section 2. Utilities.**

(a) All utility lines that are placed underground shall be at such depths as are designated by AGHOA Board of Directors or its consultants;

(b) No Owner of a Lot/dwelling shall grant or convey to a public utility or governmental authority an easement for any utility and service lines and systems,

including but not limited to water, sewers, telephone, electricity, television, cable or communication lines and systems across, under, through or upon its Lot/dwelling for service to another Lot/dwelling without the prior written consent of AGHOA Board of Directors; provided, however, nothing shall prevent an Owner from granting and conveying to such public utility or governmental authority an easement strictly to provide utility service to its Lot/dwelling.

## **ARTICLE VII.**

### **ARCHITECTURAL CONTROL**

**Section 1. The Architectural Review Board.** An Architectural Review Board consisting of three (3) or more persons shall be appointed by AGHOA Board of Directors.

**Section 2. Purpose.** The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. Nothing herein shall give the Architectural Review Board authority to regulate, control or determine external design, appearance, use or location of Parcels under development, or to be developed, or dwellings under construction, as control provided previously to AGHOA Board of Directors.

**Section 3. Conditions.** No exterior improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any property or the improvements located thereon from its natural or improved state shall be made or done without the prior approval of the Architectural Review Board, except as initially installed by Developer or as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, or improved, altered, made or done without the prior written approval of the Architectural Review Board. 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. As a condition to approval hereunder, each Owner 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.

**Section 4. Procedures.** Any Owner desiring to make improvements or changes with respect to his Lot/dwelling (other than improvements or changes to the interior of his dwelling, provided such interior changes do not alter the structural integrity of such dwelling or adjacent dwellings) shall submit to the Architectural Review Board plans and specifications showing the nature, color, type, shape, height, materials and location of the proposed improvements and/or changes. The Architectural Review Board shall have the sole discretion to determine whether the plans and specifications submitted for approval are acceptable to the Association and the Architectural Review Board shall be entitled

and empowered to enjoin or remove any construction undertaken pursuant to plans and specifications which have not been approved in writing by the Architectural Review Board. Any costs and expenses incurred by the Association in enjoining or removing any construction of improvements not previously approved in accordance herewith shall be added to and become a part of the assessment to which the Owner and his Lot/dwelling are subject. In the event the Architectural Review Board fails to approve or disapprove in writing any proposed plans and specifications within sixty (60) days after such plans and specifications shall have been submitted to the Architectural Review Board, such plans and specifications shall be deemed to have been expressly approved.

**Section 5. Liability of Architectural Review Board.** No member of the Architectural Review Board shall be liable in damages to anyone submitting plans and specifications for approval hereunder or to any Owner of a Lot/dwelling affected by this Declaration 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 and specifications. Every Person who submits plans or specifications for approval agrees, by the submission of same, and every Owner of a Lot/dwelling agrees, that he will not bring any action or suit against any member of the Architectural Review Board to recover for any such damage. All such Persons and Owners hereby waive 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.

## ARTICLE VIII

### MAINTENANCE

**Section 1. Association's Responsibility.** Except as otherwise provided herein, the Association shall maintain and keep in good repair all portions of the Community Property. The Association's responsibility with respect to the Community Property shall be deemed to include the maintenance, repair and replacement of (i) all entry features for the Subdivision, (ii) all street signs, if any, not property of City/County/State entity, (iii) all drainage detention and retention areas, ponds or lakes within the Open Space, driveways, walks, parking areas and buildings and other improvements situated within the Subdivision, and (iv) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Community Property. The Association shall also maintain all property outside of the Lots located within the Subdivision not yet developed.

**Section 2. Owner's Responsibilities.** Each Owner shall be solely responsible for, and shall maintain, repair and replace, as the case may be, the following exterior maintenance to its dwelling constructed on his Lot and any other improvements appurtenant thereto: paint, stain, repair, replace and care for, as the case may be, all exterior roof surfaces, all gutters and downspouts, all shutters, all fences, all windows, including window frames and hardware, all doors (and sliding glass doors including the glass therein) and door frames and hardware and all exterior building surfaces. Each Owner shall also be

responsible for the maintenance, repair and replacement of all glass, lights and light fixtures (exterior and interior), awnings, window boxes, window screens, and all screens or glass enclosing porches, balconies or decks which are a part of the Lot or any other improvements appurtenant thereto. Each Owner shall maintain his Lot in a neat, clean and sanitary condition; such responsibility shall include the maintenance and care of all lawns, trees, shrubs, hedges, grass and other landscaping contained within such Lot.

**Section 3. Failure to Maintain.** In the event the Board determines (i) that any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair or replacement of items for which he is responsible, or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association is caused through the willful or negligent act of an Owner, his family, guests, tenants or invitees, then the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right, through its agents and employees, to enter upon said Lot and to commence such repair, maintenance and/or replacement, at Owner's sole cost and expense. Such right of entry and repair shall be exercisable only upon fifteen (15) days prior written notice given to the Owner of said Lot, unless, in the discretion of the Board, an emergency exists necessitating a shorter period of time. The costs of any such repairs, maintenance and/or restoration shall be due and payable upon demand by the Association and shall be added to and become part of the assessment to which such Owner and his Lot are subject. There is hereby reserved to the Association a blanket easement upon, across, over and under each Lot within the Subdivision for access, ingress and egress as necessary to permit the Association to perform such maintenance. The foregoing maintenance shall be performed with the Community-Wide standards.

## **ARTICLE IX**

### **EASEMENTS**

**Section 1. Encroachment and Overhang Easements.** There shall be reciprocal appurtenant easements for encroachment and overhang between each Lot and such portion or portions of the Community Property adjacent thereto or as between adjacent Lots as a result of unintentional construction, reconstruction or repair, shifting, settlement or movement of any portion of any dwellings or other improvements on the Lots to a distance of not more than five (5) feet, as measured from any point on the common Lot line between each Lot and the adjacent portion of the Community Property or between lots, in each instance, along a line perpendicular to such common Lot line at such point; provided, however, in no event shall such easement exist if such encroachment occurred due to the willful conduct on the part of any such Owner, tenant or the Association.

**Section 2. Utility Easements.** There is hereby created in favor of the Association an easement upon, across, over, through and under all of the Community Property or the Lots in those areas depicted on the Plat for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including but not

limited to water, sewers, telephone, electricity, television, cable or communication lines and systems. Notwithstanding anything to the contrary contained in this Section, no electrical lines, gas lines, water lines or other utilities may be installed or relocated on the Lots except as initially programmed and approved by the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement be a separate recordable document, the Association shall have the right to grant such easement on the Community Property without conflicting with the terms hereof.

### **Section 3. 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 Community 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 admissions and other fees for the use of any portion of the Community Property, to limit the number of guests of dwelling owners who may use the Community 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 suspend the voting rights of a dwelling Owner and the right of an Owner to use the Recreational Property available for use by the Owners of the Lots, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and for a reasonable period of time, for an infraction of this Declaration, the By-laws or any rules and regulations promulgated by the Association.

(iii) the right of the Association to borrow money for the purpose of improving the Community Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located or to become located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Community Property; no such Mortgage given by the Association shall be effective unless an instrument agreeing to such Mortgage has been approved by the Owners of at least two-thirds (2/3rds) of the Lots; and

**Section 4. Easements for Association Maintenance.** There is hereby expressly reserved to the Association the following easements and rights-of-way in, on, over, under and through the Subdivision for the maintenance required under Article VII, Section 1. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owners' Lots/dwellings, reasonable steps shall be taken to protect such

property and damage shall be required by the Person causing the damage as 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 line between the Lots and along a line perpendicular to such boundary line at such point. The easement shall be used only for each period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Lot/dwelling 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 returned to substantially the same condition as existed prior to the damage.

**Section 6. Easements for Entry.** In addition to the right of the Board to exercise self-help as provided in Article VII, Section 5 hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Subdivision for emergency, security, and safety reasons, which right may be exercised by the manager, if any, 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. The 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 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 in the Association, and the designees of such, an easement over and upon each Lot for ingress to, egress from, installation, construction, landscaping and maintenance of entry feature and street signs for the Subdivision. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other plantings around all entry features and the right to grade the land under and around such entry features.

## ARTICLE X

### GENERAL USE RESTRICTIONS APPLICABLE TO THE SUBDIVISION

**Section 1. General.** The Board, from time to time, without the consent of the members, may promulgate, modify, or delete use restrictions and rules and regulations applicable to the Lots and the Community Property (including the assessment of fines for any violations of the aforesaid rules and regulations). This authority shall include, but shall not be limited to, the right to limit the type and size and to set the maximum and minimum

speeds of vehicles within the Community Property. The Board shall also have the authority to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community Property prior to the date that they are to become effective and shall thereafter be binding upon all Owners until and unless overruled, canceled, or modified in a regular or special meeting by a two-thirds (2/3rds) vote of the Owners.

## **Section 2. Residential Use.**

- a) All dwellings constructed on the Lots shall be restricted exclusively to single-family residential use. No dwelling constructed on a Lot, or any portion thereof, shall at any time be used for any commercial business or professional purpose. No dwelling constructed on a Lot may be divided or subdivided into a smaller dwelling. No tents, shacks, barns, trailers, or any other movable structure shall be constructed or used on the Lots, provided however, storage sheds may be permitted upon the prior written consent of the Architectural Review Board as assigned by AGHOA Board of Directors.
  
- b) All storage sheds shall comply in all respects with the following design criteria:
  - (i) Such structure shall be limited to a height of one-story dwelling and shall not be greater than twelve (12) feet in width and sixteen (16) feet in length;
  - (ii) The color scheme, materials and architectural style of such structure shall be consistent and harmonious with the dwelling on such Lot, no metal siding structures shall be permitted without the prior written consent of the Board;
  - (iii) Such structure shall be located in such manner as to be concealed from view of neighboring streets and within the rear of such owner's Lot;
  - (iv) Such structure shall be depicted on a site plan showing the relation of such structure to the property lines and the proposed or existing dwelling;
  - (v) Plans for screening such structure and landscaping such area shall be submitted along with the site plan to the Board for its prior written consent.
  
- c) Detached garage shall comply in all respects with the following design criteria:
  - (i) Such structure shall not be less than 625 square feet nor larger than 900 square feet;
  - (ii) The color scheme, materials and architectural style of such structure shall be consistent and harmonious with the dwelling on such Lot, no metal siding structures shall be permitted without the prior written consent of the Board;
  - (ii) Such structure shall be depicted on a site plan showing the relation of such structure to the property lines and the proposed or existing dwelling and must be submitted to the Board for its prior written consent.
  
- d) Gazebo/Outdoor Pavilion shall comply in all respects with the following design criteria:
  - (i) Such structure shall not exceed 20 square feet by 20 square feet;

- (ii) The color scheme, materials and architectural style of such structure shall be consistent and harmonious with the dwelling on such Lot, no metal siding structures shall be permitted without the prior written consent of the Board;
- (iii) Such structure shall be depicted on a site plan showing the relation of such structure to the property lines and the proposed or existing dwelling and must be submitted to the Board for its prior written consent.

### **Section 3. Nuisances.**

(a) No unlawful, noxious or offensive activities shall be carried on any Lot, or upon the Community Property, nor shall anything be done therein or thereon which, in the judgment of the Board, constitutes a nuisance, causes unreasonable noise or disturbance to others, emits foul or obnoxious odors or unreasonably interferes or an inconvenience with other Owners' use of their Lots and the Community Property. Any noise that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding dwellings is prohibited. All garbage cans, woodpiles and other similar items shall be located or screened so as to be concealed from neighboring streets and lots. No window air-conditioning units are permitted. The display, use or discharge of firearms or fireworks in the subdivision is prohibited. The term "firearms" shall include, without limitation, "BB" guns, pellet guns and other firearms of all types, regardless of size. Plastic firearms known commonly as "air soft" are permitted but only upon each owner's lot.

(b) No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property or any portion thereof that might disturb the peace and quiet or serenity of the Subdivision.

**Section 4. Animals and Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, kept or permitted in any dwelling constructed on a Lot. Household pets of occupants (such as dogs, cats or other usual and common household pets) may not number more than four (4), with the number of dogs limited to no more than two (2). Household pets of occupants must be kept in strict accordance with the administrative rules and regulations relating to household pets from time to time adopted or approved by the Board. No pets shall be kept, bred or maintained for any commercial purpose. All dogs which are household pets must be kept in a fenced enclosure which shall be located within an area in the rear of a Lot. Dogs which are household pets shall at all times be confined on a leash whenever they are outside a lot unless restrained by an invisible fence. Structural fences shall not be less than four (4) feet, nor more than eight (8) feet in height, and shall be constructed of wood, wrought iron or black coated vinyl chain link. All such fencing shall require the prior written approval of the Board of Directors for

AGHOA through the Architectural Review Board, prior to any installation, and thereafter shall be properly maintained and repaired at all times. Without prejudice to the Board's right to remove any such household pets, the Board may require the removal of any household pets that have caused damage or injury to person or property within the subdivision.

**Section 5. Vehicles.** Vehicles shall be parked only in the appropriate parking spaces servicing the Lot. All parking shall be subject to such rules and regulations as the Board of Directors of HOA may adopt. The term "vehicle" as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking space(s)" shall refer to the number of garage parking space(s) and the space(s) located in the driveway of each Lot. All dwellings shall contain a garage; carports shall not be permitted.

- (a) No vehicle may be left upon any portion of the subdivision, except in a garage, for a period of longer than five (5) days if it is not licensed, or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the subdivision by the Board of Directors of AGHOA. No towed vehicle shall be permitted on any Lot, except if kept in a garage for periods longer than twenty-four (24) consecutive hours, (the intent of this provision is that the towed vehicle may not be stored on a Lot except if in a garage and the temporary removal of such vehicle from the Lot to break the continuity of the twenty-four (24) consecutive hours shall not be sufficient to establish compliance with this restriction). Any such vehicle shall be considered a nuisance and may be removed from the subdivision by the Board of Directors of AGHOA.
- (b) Trucks with mounted campers shall not be considered recreational vehicles, provided that they are used on a regular basis for transportation and the camper is parked out of public view on a Lot. Trucks with a load capacity of one (1) ton or more, vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors are prohibited from being parked within the Subdivision, except in garages. Notwithstanding the above, trucks (including tractors with or without attached trailers), vans, commercial vehicles and vehicles with commercial writing on their exteriors shall be allowed temporarily in the Subdivision only in the normal course of business during normal business hours, provided that no such vehicle shall be authorized to remain in the Subdivision overnight.
- (c) If any vehicle is parked on any portion of the Subdivision in violation of this Section, or in violation of any rule or regulation promulgated by the Board, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and phone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle, the violation continues or thereafter occurs again within a six (6) month period of such notice, the vehicle may be towed in accordance with the notice, without further notice to

the Owner or user of the vehicle. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's Lot, is obstructing the flow of traffic, is parked on any unauthorized area of the Common Property, or otherwise creates a hazardous condition, no notice shall be required, and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, neither the Board nor any director, officer or agent of the AGHOA shall be liable to any person for any claim of damage as a result of the towing activity.

**Section 6. Signs** No Owner of a Lot shall display, hang, store or use any sign, except one "for sale" sign consistent with the Community-Wide standards having a maximum height of four (4) feet measured from ground level, outside an Owner's dwelling or on an Owner's Lot or any portion thereof or elsewhere within the Subdivision without the prior written approval of the Board. The Board shall have the right to erect any reasonable and appropriate signs.

**Section 7. Tree Removal.** No trees shall be removed without the expressed written consent of the Board or its designee, except for (i) tress removed by the Developer; (ii) diseased or dead trees and (iii) trees needing to be removed to promote the growth of other trees.

**Section 8. Lighting.** Notwithstanding anything to the contrary in this Article IX, the following exterior lighting may be installed without the necessity of obtaining the prior written approval of the Board or its designee (a) seasonal decorative lights during the Christmas season; (b) illumination of other than the front or side yards of a Lot, (c) illumination of model homes and entrance features constructed by the Developer, and (d) other lighting originally installed by the Developer. Plans for all other exterior lighting must be submitted and approved in this Article X, Section 1 hereof.

**Section 9. 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. Overseeding 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 not, however, apply to basketball goals which may be installed after the type and location have been previously approved in writing by the Board or its designee.

**Section 10. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions of debris shall be placed in these areas. No Owner or Occupant of any Lot may obstruct or redirect the drainage flows after the location and installation of drainage swales, storm sewers or storm drains. Developer and AGHOA hereby reserves a perpetual easement to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. Developer and AGHOA 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 slope shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 11. Swimming Pools.** All above ground swimming pools are prohibited. No in-ground swimming pool shall be constructed, erected, installed or maintained upon any Lot without the prior written consent of the Board of Directors of AGHOA, by Architectural Review Board.

**Section 12. Other Restrictions.**

(a) Each Owner shall maintain his dwelling in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done to or in an Owner's dwelling or on an Owner's Lot which may increase the cost or cause the cancellation of insurance on any other Lot or on the Community Property. No Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles outside an Owner's dwelling, or which may be visible from the outside of such Owner's dwelling (other than draperies, curtains or shades of a customary nature and appearance, subject to the rules and regulations of the Board).

(b) Until the Developer has completed or sold all of the Lots, neither the Owners nor the Association nor the use of the Property shall interfere with the completion of the contemplated improvements and the sale of the Lots.

(c) 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 condition, shall not be pursued or undertaken in any part of the Subdivision.

**ARTICLE XI**

**INSURANCE**

**Section 1. Purchase of Insurance Policies.** The Board, or its duly authorized agent, shall obtain insurance policies upon insurable structures and improvements hereafter erected and maintained on the Community Property and covering the items described in Section 2 below for the benefit of the Association or any mortgagee as their interest may appear. Premiums for all insurance shall be common expenses of the Association.

**Section 2. Coverage.** The following items shall be covered by insurance:

(a) All structures and improvements upon the Community Property and all personal property included within such structures and Improvements in an amount equal to the full replacement cost, minus ordinary deductible amounts, as determined annually by the Board. Such coverage shall afford protection against such risks as are covered by an all-risk form and such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use.

(b) Comprehensive general liability and automobile liability insurance covering loss or damage resulting from an occurrence on the Community Property, in such amounts as may be required by the Board, but having a combined single limit of not less than \$1,000,000.00, covering all claims for bodily injury or property damage or both arising out of a single occurrence, with such coverage to include protection against water damage liability and such other risks as shall customarily be covered with respect to buildings similar in construction, location and use.

(c) Worker's compensation as required by law, and if available at reasonable prices.

(d) A policy of fidelity coverage against dishonest acts on the part of the members of the Board and any employee or volunteers of the Association responsible for handling funds belonging to or administered by the Association if such coverage is available at reasonable rates.

(e) Such other insurance as the Board shall determine from time to time to be desirable.

**Section 3. Named Insured.** The named insured on all policies of insurance shall be the Association, as trustee for the respective parties which may be benefitted by such insurance, as their interest may appear. Such insurance shall be governed by the provisions hereinafter set forth.

**Section 4. Insurance Policy Provisions.** All property damage insurance and public liability insurance maintained by the Association shall contain the following provisions, to the extent deemed necessary by the Board and if reasonably available:

(a) All policies shall be written with an insurance company licensed to do business in the State of Georgia

(b) Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association and holder(s) of first mortgages on Recreational Facility or other structures constructed on the Community Property.

(c) The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining

whether the insurance at least equals the full replacement cost, together with an inflation guard endorsement and an agreed amount endorsement if these are reasonably available.

(d) If available at reasonable prices, a waiver of subrogation by the insurer as to any and all claims against Owners, the Association and their respective agents, employees, tenants and guests and a waiver of all defenses based upon co-insurance or upon any invalidity arising from the acts of the insured, or such policies shall otherwise permit the Association, prior to its sustaining a loss, to obtain from the insurer a release of the insurer's right to assert claims against any Owners.

(e) All insurance policies shall be reviewed annually by one or more qualified Persons as designated by the Board.

(f) That any no other insurance clause contained in the master policy shall expressly exclude individual Owner's policies from its operation.

**Section 5. Other Insurance.** In no event shall any recovery or payment under the insurance coverage obtained and maintained by the Association be affected or diminished by insurance purchased by individual Owners or their mortgagees. Any Owner who obtains an individual insurance policy covering his dwelling, shall at the request of the Board file a copy of such individual policy or policies with the Board within thirty (30) days after purchase of such insurance.

**Section 6. Association as Agent.** The Association is hereby irrevocably appointed agent, with full power of substitution, for each Owner and for each Owner of any other insured interest in the Property, to adjust all claims arising under insurance policies purchased by the Association, to bring suit thereon in its name and/or in the name of other insureds, to deliver releases upon payments of claims, to compromise and settle such claims and otherwise to exercise all of the rights, powers and privileges of the Association and each Owner or any other holder of an insured interest in the Property under such insurance policies; provided, however, the actions of the Association shall be subject to the approval of the holders of the first mortgages on each of the Lots affected thereby.

**Section 7. Damage and Destruction to Recreational Property.** Any damage or destruction by fire or other casualty to the Recreational Property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless at least two-thirds (2/3rds) of the members of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct and no alternative improvements are authorized, then, in such event, the property shall be restored to its natural state and maintained as unimproved portion of the Open Space in a neat and sightly condition, such insurance proceeds shall be deposited with Association to be held in accordance with the terms and conditions of this Declaration.

**Section 8. Distribution of Proceeds.** Such insurance proceeds as are received shall be applied to repair or restoration of the Recreational Property as hereinafter provided unless it is determined pursuant to Section 7 of this Article not to repair or reconstruct.

(a) Plans and Specifications. Any reconstruction or repair must be sufficient to restore the Recreational Property to substantially the same condition in which they existed prior to the casualty and must be made substantially in accordance with the plans and specifications for the Recreational Property or, if not, according to plans and specifications approved by the Board.

(b) Responsibility. If the damage is to the Recreational Property, then the responsibility of reconstruction and repair after casualty shall be that of the Association.

(c) Estimate of Costs. When the Association shall have the responsibility of reconstruction or repair, prior to the commencement of reconstruction and repair the Association shall obtain reliable and detailed estimates of the cost to repair or rebuild.

(d) Assessments for Reconstruction and Repair. If the proceeds of insurance are not sufficient to completely defray the estimated cost of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the insufficient special assessments shall be levied against the Owners in proportion to the number of Lots owned by the Owners without the necessity of a vote of the Association's members. An assessment against an Owner on account of damage to the Recreational Property shall be in proportion to the Owner's rate of assessment as provided hereinabove. Special assessments for reconstruction and repair may be collected, and the collection enforced, in the same manner as an assessment.

(e) Construction Funds. The funds for the payment of costs from reconstruction and repair after casualty, which shall consist of the proceeds of insurance held by the Association and funds collected by the Association from assessments and special assessments against Owners, shall be disbursed in payment of such costs in the following manner:

(f) Lesser Damage. If the amount of the estimated cost of reconstruction and repair which is the responsibility of the Association is less than one percent (1%) of the insured value of the Recreational Property then the construction fund shall be disbursed in payment of such costs upon the order of the Board.

**Section 9. Damage and Destruction to Lots.** The damage or destruction by fire or other casualty to a dwelling or 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 such seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable

time thereafter. Alternatively, the Owners may elect to demolish all improvements on the Lot and remove all debris therefrom within such seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in Article XI, Section 7 hereof.

## **ARTICLE XII**

### **CONDEMNATION**

Wherever all or any portion of the Community Property shall be taken (or conveyed) in lieu of and under threat of condemnation, the Board, acting on behalf of the Association or on the written direction of all Owners of Lots subject to the taking, (if any) by any authority having the power of eminent domain, the Association shall represent the Owners. The provisions of Article XI, Section 7 above shall apply and shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

## **ARTICLE XIII**

### **MORTGAGE PROVISIONS**

**Section 1. Notice of Action.** An institutional holder, insurer or guarantor of a first Mortgagee, who provided 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 the following:

(a) any condemnation loss or 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 By-laws 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 By-laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee or any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Community Property.

**Section 3. Notice to Association.** Upon request, each Lot owner shall be obligated to furnish the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 4. Applicability of Article XII.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-laws or Georgia law.

**Section 5. 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 XIV

### GENERAL PROVISIONS

**Section 1. Enforcement.** Each Owner shall comply strictly with the By-laws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his Lot, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-laws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board on behalf of the association, or in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-laws, rules and regulations and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose tenants are responsible for violating the foregoing).

**Section 2. Self Help.** In addition to any 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 Community Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the By-laws,

the rules and regulations or the Use Restrictions as contained herein or any governmental zoning ordinances. Unless an emergency situation exists, the Board shall give the violating Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees shall be assessed against the violating Lot Owner and shall be collected for herein for the collection of assessments.

### **Section 3. Amendment.**

(a) As more specifically provided in Article II above, Association shall have the right to execute and record one or more Supplementary Declarations without the consent or approval of the Owners within the time period specified therein for the purpose of adding additional property to the scheme and operation of this Declaration.

(b) This Declaration may be amended unilaterally at any time and from time to time by Association (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Owners subject to this Declaration, (iii) if such amendment is required to obtain the approval of this Declaration by an institutional lender or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the dwellings subject to this Declaration or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the dwellings subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's dwelling unless any such dwelling Owner shall consent thereto in writing.

(c) Further, so long as Association has the right unilaterally to subject additional property to this Declaration, as herein provided, Association may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not unilaterally adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect the substantive rights of any Owner hereunder, nor shall it adversely alter title to any dwelling without the consent of the affected Owner.

(d) In addition, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3rds) of the Lots and the consent of Association.

(e) Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

(f) Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in a court of competent jurisdiction in the county in which the Subdivision is located within one (1) year of the recordation of such amendment.

**Section 4. Severability.** If any provision of this Declaration or portion thereof, or the application thereof to any person or circumstance, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Declaration, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Declaration and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

**Section 5. 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 the feminine.

**Section 6. Captions.** The section headings in this Declaration are for convenience only, and shall in no way define or limit the scope or content of this Declaration, and shall not be considered in any construction or interpretation of this Declaration or any part hereof.

**Section 7. No Partnership.** Nothing in this Declaration shall be construed to make Association and Developer partners or joint venturers or render either of them liable for the debts or obligations of the other.

**Section 8. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 9. Indemnification.** In accordance with, and to the full extent allowed by, the Georgia Non-Profit Corporation Code, 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 or officer of the Association against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, writ 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 10. Conveyance of Community Property to Association;** Assignment of Contracts. The Developer may transfer or convey to the Association any personal

property and any improved or unimproved real property, leasehold, easement or other property interest. Such conveyance shall be accepted by the Association, and the property shall thereafter be Community Property to be maintained by the Association for the benefit of all or a part of its members. Association shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. The Association shall also accept assignment of, and shall assume and agree to perform, any contracts entered into by the Developer for the benefit of the Association or the Owners, including, without the limitation, detention pond maintenance agreements and all types of utility easements.

**Section 11. Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the By-laws, the Articles of Incorporation of the Association, rules and regulations, use restrictions, and any amendments to any of the foregoing, the Association hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Community Property for the benefit of the Association, its successors and assigns over, under, in and/or on the Community Property, without obligation and without charge to the Association, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair, or replacement in or to the Community Property and any other property now owned or which may in the future be owned by the Association (such other property is hereafter referred to as Additional Property). The reserved easement shall constitute a burden on the title to the Community Property.

**Section 12. Books and Records.** This Declaration, the By-laws, copies of the rules, regulations and use restrictions, membership register, books of account and minutes of meetings of the Association and the Board shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by any holder of a first Mortgage at any reasonable time and for a purpose reasonably related to an Owner's interest or such mortgagee at the Office of the Association or at such other reasonable place as the Board shall determine. The Board shall establish reasonable rules with respect to (i) notice to the custodian of the records, (ii) the hours and the days of the weeks when such inspection may be made and (iii) payment of the cost for reproduction of such records. Any officer of the Association and/or director of the Board shall have the absolute right at any time to inspect the books and records, including the right to reproduce same.

**Section 13. Financial Statements.** Financial statements for the Association shall be compiled annually in the manner prescribed by the Board and shall be made available to the Owners at the annual meeting of the Association. The Owners may require by a vote of two-thirds (2/3rds) of the Owners, that such financial statements be audited as a common expense of the Association by a certified public accountant.

**Section 14. Notice of Sale or Lease.** If an Owner sells his dwelling, the Owner shall notify the Association in writing, which notice shall include the name of the buyer or lessee and such other information as the Board shall reasonably may require.

**Section 15. Variances.** Notwithstanding anything to the contrary contained herein, the Association is hereby authorized to grant individual variances from the provisions of this Declaration, the By-laws and any of the rules and regulations and use restrictions promulgated pursuant hereto so long as such variance would not be inconsistent with the overall scheme of development of the Subdivision.

**Section 16. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by two-thirds (2/3rds) vote of the Owners, except that no such approval shall be required if (i) any action is brought to enforce the provisions of this Declaration, (ii) the imposition and collection of assessments as provided in this Declaration, (iii) proceedings challenging ad-valorem taxation, or (iv) counterclaims brought by the Association in proceedings brought against it.

**Section 17. Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, Association and Ashley Glen LLC as Developer, acting by and through its authorized member, has executed this Declaration under seal on the day and year first above written.

ASSOCIATION:

Signed, sealed and delivered  
in the presence of:

ASHLEY GLEN HOMEOWNERS  
ASSOCIATION

\_\_\_\_\_  
Unofficial Witness

By: Pamela H. Brown, Secretary

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
ASHLEY GLEN LLC

My commission Expires:

By: Ron Johnson, Authorized Member

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