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Athens, Georgia 30606
Attn: David K. Linder

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR
MALCOM BRIDGE ESTATES**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR MALCOM BRIDGE ESTATES is made this 1st day of May, 2024, by **MALCOM BRIDGE ESTATES, LLC**, a Georgia limited liability company (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

WHEREAS, Declarant is the owner of that certain real property known as Malcom Bridge Estates containing 99.905 acres, more or less, situate, lying and being on the westerly side of Malcom Bridge Road in the 1331st District, G. M., Oconee County, Georgia, and more particularly described on **EXHIBIT "A"** attached hereto and made a part hereof;

WHEREAS, Declarant intends to initially develop the Development on the real property described on **EXHIBIT "A"**, to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners within the Development by the recording of this Declaration and any amendments and additions thereto, to avail the Development of the provisions of the Georgia Property Owners' Association Act codified at O.C.G.A. §44-3-220, *et seq.*, (the "Act") and to provide for the expansion of the Development for future development in one or more additional phases. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Development and to establish a method for the administration, maintenance, preservation, use and enjoyment of property that is now or may hereafter be subjected to this Declaration; and

WHEREAS, Declarant has caused or will cause the Association to be formed and organized as a Georgia non-profit corporation to perform certain functions for the common good and general welfare of the Owners.

NOW, THEREFORE, Declarant hereby declares that the real property described on EXHIBIT "A" shall be held, sold and conveyed subject to this Declaration and the Act for the purpose of enhancing and protecting the value, desirability and attractiveness of said real property. The covenants, restrictions and easements set forth herein shall run with title to the real property described on EXHIBIT "A" and shall be binding on all parties having or acquiring any right, title or interest in said real property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner and each Owner's grantees, distributees, heirs, successors and assigns and to the benefit of the Association.

ARTICLE I DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

1.01 ACC. "ACC" or the "Architectural Control Committee" means the committee established by the Declarant or the Board pursuant to this Declaration and the By-Laws which committee shall govern and enforce all proposed and completed architectural construction, additions, changes, or modifications to any Lot or Structure pursuant to the Design Guidelines.

1.02 Act. "Act" shall have the meaning set forth in the recitals of this Declaration.

1.03 Additional Property. "Additional Property" means that property which may be identified by the Declarant and, at the option of the Declarant, submitted to the provisions hereof. Additional Property may include all, part or none of the Future Development and may include property in addition to, or in lieu of, the Future Development. Declarant may, from time to time, submit Additional Property to the provisions of this Declaration as set forth in Article XI hereof. Except as otherwise herein specifically provided, no portion of the Additional Property shall be subject to this Declaration unless and until the same is submitted in the manner set forth in this Declaration.

1.04 Articles of Incorporation. "Articles of Incorporation" means the articles of incorporation of the Association, as same may be amended from time to time.

1.05 Association. "Association" means Malcom Bridge Estates Homeowners' Association, Inc., a Georgia non-profit corporation, formed for the purpose of exercising the powers of a property owners' association created pursuant to the Act. The Association is sometimes referred to herein as the "HOA."

1.06 Board. "Board" means the board of directors of the Association appointed and elected, from time to time, in accordance with this Declaration and the By-Laws and which shall be the governing body of the Association.

1.07 Builder. "Builder" means any person or entity who or which purchases one or more Lots for the purpose of constructing one or more Residences for later sale to Persons in the ordinary course of such person's or entity's business.

1.08 By-Laws. "By-Laws" means the by-laws of the Association adopted by the Association, as same may be amended from time to time.

1.09 Common Property. "Common Property" means all real and personal property (together with any and all improvements now or hereafter located thereon) owned or leased by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.10 Declaration. "Declaration" means this recordable instrument creating covenants upon real property, as same may be amended pursuant to Article X hereof, which are administered by the Association in which membership is mandatory for all Owners in the Development.

1.11 Declarant. "Declarant" means (i) Malcom Bridge Estates, LLC, a Georgia limited liability company, (ii) any lender who succeeds to the interest of Declarant through foreclosure of any deed to secure debt or conveyance in lieu of foreclosure, (iii) any successor, successor in title or assign of the Declarant if the Declarant delivers to such party a written assignment of Declarant's rights under this Declaration, provided that in any instrument of assignment or deed of conveyance such successor, successor in title or assign is designated as the "Declarant" hereunder by the assignor or grantor of such instrument or deed, and (iv) for the limited purpose of executing an amendment to this Declaration to subject Additional Property to this Declaration, any successor, successor in title or assign of Declarant which intends to erect one or more Residences thereon or which intends to sell such property to one or more Builders for the purpose of erecting one or more Residences thereon and which owns title to said property at the time the Additional Property is to be subjected to this Declaration pursuant to Article XI hereof; provided, further, upon such designation of a successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.12 Development. "Development" means the phase of development of Malcom Bridge Estates as shown on the Plat and any subsequent phase or phases of development of Malcom Bridge Estates on Additional Property which may be subjected to the provisions of this Declaration as set forth in Article XI hereof. Notwithstanding the foregoing, Declarant shall have no obligation to develop any subsequent phase or phases of Malcom Bridge Estates unless and until Additional Property is subjected to this Declaration as set forth in Article XI hereof.

1.13 Development Code. "Development Code" shall have the meaning set forth in Section 5.01 of this Declaration.

1.14 Design Guidelines. "Design Guidelines" means, collectively, the design and construction guidelines and application and review procedure applicable to the Property promulgated and administered pursuant to this Declaration, including the Design Guidelines prepared for Malcom Bridge Estates, and all related applications, forms and other submittals, as same may be modified or amended from time to time.

1.15 Due Date. "Due Date" shall have the meaning set forth in Section 4.04 of this Declaration.

1.16 Final Plat. "Final Plat" shall have the meaning set forth in Section 3.03(c) of this Declaration.

1.17 Future Development. "Future Development" shall have the meaning set forth in Section 11.02(a) of this Declaration.

1.18 Lot. "Lot" means any parcel of land shown upon the Plat as an approved lot within the meaning of the zoning regulations set forth in the Oconee County Unified Development Code or as similarly shown on an approved subdivision plat of survey describing Additional Property which may be annexed to the Property from time to time as set forth in Article XI hereof; provided, however, that no Lot or portion of a Lot shall constitute Common Property, except as provided in Article II.

1.19 Member. "Member" means any member of the Association. The Members of the Association shall be comprised of Class A Members having Class A voting rights and a Class B Member (who shall be the Declarant) having Class B voting rights, all as set forth in Section 3.03.

1.20 Membership. "Membership" means the collective total of all Members of the Association.

1.21 Owner. "Owner" means the record owner (including Declarant and any Builder), whether one or more Persons, of fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the Person who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.22 Person. "Person" means a natural person, a corporation, a limited liability company, a partnership, a trust or any other legal entity.

1.23 Plat. "Plat" means that certain plat of survey entitled "FINAL PLAT FOR MALCOM BRIDGE ESTATES" by Baseline Surveying & Engineering, Inc., Matt D. Ulmer, Registered Land Surveyor, dated March 22, 2024 (in seven sheets), recorded in Plat Book 2024, pages 65-71, in the Office of the Clerk of the Superior Court of Oconee County, Georgia, which is incorporated herein by reference thereto.

1.24 Property. "Property" means that certain real property described on EXHIBIT "A" attached hereto and made a part hereof, together with such Additional Property as may hereafter be subjected to this Declaration as set forth in Article XI hereof.

1.25 Regulations. "Regulations" shall have the meaning set forth in Section 5.01 of this Declaration.

1.26 Residence. "Residence" means a structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A Structure and the land owned as a part thereof (the Lot) shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and unless and until the Lot and Structure located thereon shall have been conveyed or leased to a third party other than the Builder (if applicable) thereof. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a Certificate of Occupancy for the Residence.

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

1.28 Right of Abatement. "Right of Abatement" shall have the meaning set forth in Section 9.02 of this Declaration.

1.29 Stormwater Agreement. "Stormwater Agreement" means that certain Stormwater Management Inspection and Maintenance Agreement between Declarant and Oconee County dated _____, 2023, recorded in Deed Book 1747, page 533, in the Office of the Clerk of the Superior Court of Oconee County, Georgia, as same may be amended from time to time.

1.30 Stormwater Facilities. "Stormwater Facilities" means the stormwater detention facilities identified on the Plat as "Stormwater Management Area A1" on Outlot A-1 and "Stormwater Management Area A2" on Outlot A-2, and all facilities related thereto.

1.31 Structure. "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 limitation, any building (such as a residence) or part thereof, garage, porch, shed, greenhouse or bathhouse, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, or any other temporary or permanent improvements to such Lot; and

(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.

ARTICLE II
COMMON PROPERTY

2.01 Conveyance of Common Property.

(a) The Declarant may from time to time convey fee simple title to the Association or grant easements to the Association in, at no expense to the Association and in accordance with this Section 2.01, real and personal property for the common use and enjoyment of the Owners and, to the extent set forth in this Declaration, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property. Any such conveyance of Common Property by Declarant to the Association will be subject to all of the covenants and restrictions set forth in this Declaration, the Stormwater Agreement, ad valorem taxes, all easements and other matters of record to which the Common Property is subject, and all easements, licenses and other rights granted in or to the Common Property pursuant to the provisions of this Declaration.

(b) Without limiting the generality of Section 2.01(a), it is contemplated that (i) the roads and streets within the Development shown as "Malcom Estates Drive," "Malcom Estates Ridge," "Malcom Estates Court," "Malcom Estates Point" and "Whistling Creek Crossing" on the Plat shall be private streets and will, together with related sidewalks, curbs and gutters, be conveyed by the Declarant to the Association, (ii) Lot 40 designated as "Amenity Lot" on the Plat, together with the pool, the pool house, the freestanding cluster box unit containing multiple mailbox components for each Lot, the asphalt drive and parking area, and other improvements to be constructed thereon, are intended for recreational and general community use and will be conveyed by the Declarant to the Association and (iii) Outlot A-1 and Outlot A-2 shown on the Plat, on which are located the Stormwater Facilities, will be conveyed by Declarant to the Association, together with all drainage easements related thereto, subject to the Stormwater Agreement, and all of such property so conveyed shall be Common Property. 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 Section 2.01(b) at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in Section 2.01(b), the Declarant may convey to the Association or to any municipality or other governmental body, agency or authority in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) 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 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 municipality or other governmental body, agency or authority, as the case may be.

2.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property, which right 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 the Association may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03(e) and 3.05.

2.03 Rights of The Association. The rights and privileges conferred in Section 2.02 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, including the acquisition, construction, improvement, equipping and maintenance of the Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security instrument any or all of the Association's property including Common Property and revenues from assessments, initiation fees, user fees and other sources; provided, however, that the Association shall not grant or convey to any Person by deed to secure debt, mortgage or other security instrument any security title or security interest in the Association's property including Common Property and revenues from initiation fees, annual assessments, special assessments and other sources without the approval by at least two-thirds (2/3) of the Members entitled to vote thereon who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association and, during any period in which Declarant retains the right to appoint and remove any member of the Board of the Association and any officers or officers of the Association, by the Declarant;

(c) dedicate or transfer all or 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 cease to be subject to this Declaration or all or any part of the Restrictions; provided, however, that the Association shall not dedicate or transfer all or any part of the Common Property or interests therein as aforesaid, unless such dedication or transfer is approved by at least two-thirds (2/3) of the Members entitled to vote thereon who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association and, during any period in which Declarant retains the right to appoint and remove any member of the Board of the Association and any officers or officers of the Association, by the Declarant;

(d) charge reasonable fees in connection with the admission to and use of facilities or services by Members and non-members; provided that in setting any such fees the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

(e) suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(f) to sell, lease or otherwise convey all or any part of its properties and interests therein; provided, however, the Association shall not sell, lease or otherwise convey all or any part of its properties or interests therein without the approval by at least two-thirds (2/3) of the Members entitled to vote thereon who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association and, during any period in which Declarant retains the right to appoint and remove any member of the Board of the Association and any officers or officers of the Association, by the Declarant;

(g) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and

(h) maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate governmental authority having jurisdiction.

2.04 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 shall designate in the deed of conveyance or easement that such real property is to be Common Property and, further, may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not be used for any different purpose or purposes without the approval by at least two-thirds (2/3) of the Members entitled to vote thereon who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association and, during any period in which Declarant retains the right to appoint and remove any member of the Board of the Association and any officers or officers of the Association, by the Declarant.

(a) **Entrance Area Easements.** It is contemplated that certain landscape and sign easements shown on the Plat will be reserved (or otherwise established) by Declarant on Lot 1 and Lot 40 for the erection and maintenance of entrance monuments, walls, fences, gates and related structures and landscaping, together with necessary utilities thereto, in order to provide an attractive atmosphere and privacy to Owners within the Development. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect such structures within the easement areas, together with the right to plant grass, flowers, shrubs and trees, to tend and maintain such plantings and to generally landscape the area within the easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. Such landscape and sign easements areas shall be designated as such and all Owners, in the case of Lot 1, and the Association, in the case of Lot 40, taking title to Lot 1 and Lot 40, respectively, shall take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

(b) **Encroachment Easements.** If any building or other Structure initially constructed on any of the Lots, including, without limitation, any eaves, roof overhangs, balconies, siding, porches or other structures which may be attached to the walls and roof of such building or other Structure, and which may encroach onto or over or extend into the air space of any portion of the Common Property, or conversely, if any Structure initially constructed on the

Common Property encroaches onto or over portions of any Lot, a valid easement for the encroachment and for the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

2.05 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. Any delegation of rights must be made in accordance with the By-Laws and will be subject to reasonable regulation by the Board and in accordance with policies and procedures the Board may adopt from time to time.

2.06 Maintenance and Repair. Except as may be herein otherwise specifically provided, the Association shall maintain, repair and replace all portions of the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all entrance structures, landscaping, street-light systems, streets and roadways within the Development, the Stormwater Facilities, pool, the freestanding cluster box unit and other improvements situated on the Common Property. In addition, the Association shall maintain grass, entranceways and other landscaping located along or in rights of way which were installed and maintained by Declarant, to the extent permitted or required by the applicable governmental authority; the Association shall maintain all paved areas such as streets, roads and retaining walls which were installed by Declarant, as well as sidewalks which were installed by Owners, that are not otherwise maintained by any governmental body.

The Association shall also have the right, but not the obligation, to maintain and provide services for the benefit of other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and cost-sharing agreements regarding such property, provided that the Board has determined such easements and cost-sharing agreements would benefit the Owners.

The Association shall be not be liable for injury or damage to a Person or property caused by the elements or by any Owner, or by any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment, the responsibility for the maintenance of which is that of the Association, nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property which may be stored in or upon any part of the Common Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform such function required to be taken or performed by the Association under this Declaration, 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.

ARTICLE III HOMEOWNERS' ASSOCIATION

3.01 Purposes, Powers and Duties of the Association. The Association shall be formed as a non-profit corporation for the sole purpose of performing certain functions for the common good and general welfare of the Owners of the Development. The Association shall

have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the Owners of the Development. To the extent, and only to the extent, necessary to carry out such purpose, the Association shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

3.02 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.

3.03 Voting Rights. Subject to the provisions of this Section 3.03, the Association shall have two (2) classes of voting Membership: Class A Members and Class B Members.

(a) **Class A Members.** Every Person who is an Owner, with the exception of the Declarant, except as otherwise set forth herein, shall be a Class A Member and shall be entitled to one vote for each Lot owned by such Owner. When more than one Person is a Class A Member by virtue of ownership of fee simple title in the same Lot, the vote for such Lot shall be exercised as such Persons, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of a disagreement among such Persons and an attempt by two or more of them to cast the vote of such Lot, such Persons shall not be recognized, and the vote of such Lot shall not be counted. The membership of a Class A Member in the Association shall automatically terminate upon the conveyance of such Member's Lot.

No termination of the membership of a Class A Member in the Association shall affect such Member's obligation to pay assessments, as hereinafter provided for, which are due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods from and after the date of such termination.

(b) **Class B Members.** The Declarant shall be the sole Class B Member. The Class B Member shall have full voting membership rights, and for so long as such Class B membership exists, the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to three (3) votes for each Lot owned; provided, however, in no event shall the Class B Member have less than the total number of votes held by all Class A Members plus one (1). The Class B Membership shall cease and be converted to a Class A Membership at such time as Declarant no longer retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association pursuant to Section 3.08 below; provided, however, that so long as any mortgagee of Declarant holds security title in or to any portion of the Property as security for a development loan to Declarant, the Class B Membership shall not terminate without the prior written consent of such mortgagee. If at the time of termination of the Class B membership Declarant still owns any Lot or Lots, then as to each such Lot, Declarant shall be deemed to be a Class A Member.

(c) **Effect of Additional Property on Voting Rights.** The Development may, from time to time, be expanded for future development in phases whereby Declarant subjects Additional Property to the provisions of this Declaration resulting in additional Lots to be developed. Each such additional phase will be evidenced by an approved plat of survey depicting such Additional Property (subdivided into Lots) to be recorded in the Office of the

Clerk of the Superior Court of Oconee County, Georgia, in accordance with Article XI of this Declaration. Declarant will notify the Association in writing after the final plat of survey (the "Final Plat") depicting Additional Property (subdivided into Lots) for the final phase of the Development has been recorded in said Clerk's Office. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of a subdivision plat evidencing a phase of the Development, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phase added and in accordance with the formula set forth in Section 3.03(b). Notwithstanding the foregoing, the Declarant shall have no obligation to develop any additional proposed phase of the Development unless and until Additional Property is subjected to this Declaration as set forth in Article XI hereof.

3.04 Board of Directors and Officers.

(a) **Board.** The affairs of the Association shall be managed by the Board of the Association. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the By-Laws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation Code or this Declaration, the Association's By-Laws or Articles of Incorporation, the powers inherent in, or expressly granted to, the Association may be exercised by the Board acting through the officers of the Association without any further consent or action on the part of the Members.

(b) **Officers.** The number of officers and the method of election of officers shall be as set forth in this Declaration and in the By-Laws of the Association. Notwithstanding any provision to the contrary in this Declaration, in the Articles of Incorporation or in the By-Laws of the Association, officers of the Association may be appointed or removed by the Declarant until such time as the Declarant no longer has the right to appoint and remove Members of the Board.

3.05 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property by any Person who:

(a) shall be subject to the Right of Abatement by reason of having failed to take reasonable steps to remedy a violation or breach of the Restrictions within thirty (30) days after the date of receipt of written notice of the same pursuant to the provisions of Section 6.09, 7.11 or 9.02 hereof;

(b) shall be delinquent in the payment of any initiation fee or any assessment levied by the Association pursuant to the provisions of Article IV hereof; or

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property.

Such suspension shall be for the balance of the period in which said Member or Person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in Section 3.05(c), the suspension may be for a period not to exceed 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.

3.06 Termination of Membership. Membership in the Association shall cease only when a Person ceases to be an Owner.

3.07 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 Membership of the Association shall be governed by this Declaration and the By-Laws of the Association, as each shall from time to time be in force and effect.

3.08 Control by Declarant and Appointment of the Board.

(a) Until such time as Declarant no longer has the right to appoint and remove members to the Board of the Association, the Board shall consist of one (1) member. Notwithstanding any other provision to the contrary in this Declaration, the Articles of Incorporation, or the By-Laws of the Association, the Declarant hereby retains the right to appoint all of the members of the Board and to remove and replace such appointees until fifteen (15) days after the first of the following events shall occur: (a) the expiration of twenty-five (25) years after the date of recording of this Declaration (as indicated on the face of this instrument); (b) the date ninety-five percent (95%) of the Lots on which Residences have been constructed shall have been conveyed by either the Declarant or by a Builder who purchased a Lot or Lots from Declarant for the purpose of constructing thereon a Residence or Residences, to an Owner or Owners for residential occupancy; or (c) the surrender by the Declarant of the right to appoint and remove members of the Board of the Association evidenced by an express written amendment to this Declaration executed and recorded by Declarant.

(b) Upon the expiration or surrender of the Declarant's right to appoint and remove members of the Board of the Association and any officer or officers of the Association pursuant to this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be promptly called upon the expiration or surrender of such right. At such time as Declarant's right to appoint and remove members of the Board and any officers or officers of the Association passes to the Owners, as aforesaid, (i) the Association shall have an adequate reserve fund as required under Section 4.04(b), (ii) no indebtedness of Declarant shall pass to the Owners and (iii) the facilities constituting a part of the Common Property with respect to which the Association is responsible for maintenance, repair and replacement shall meet the standards of and shall be in a properly functioning condition as required by the Development Code. At such special meeting, the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association which Declarant has in its possession. 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. The Association may exercise any other right or privilege given to it by the express terms of this Declaration or by law or 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.

ARTICLE IV
ASSESSMENTS

4.01 Covenant for Assessments and Creation of Lien and Personal Obligation.
Each Owner, jointly and severally, for himself, his heirs, distributees, 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 a **one-time initiation fee** at the closing of the purchase and acquisition of such Lot. Such fee shall be collected at the time of the closing of such purchase and acquisition; provided, however, in the event that said fee is not collected at the closing, the Owner who purchases and acquires such Lot shall remain liable for the payment of same and said fee shall constitute a lien against such Lot until paid in full. The initial amount of such initiation fee shall be \$1,000.00, which shall be subject to change. The initiation fee may be used for the payment of operating expenses of the Association or added to a capital reserve fund for future needs of the Development;

(b) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by such Owner;

(c) 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 such Owner;

(d) that there is hereby created a continuing charge and lien upon all Lots owned by such Owner against which all initiation fees, annual assessments and special assessments (such fees and assessments being sometimes referred to herein, collectively, as "assessments," as the context requires or permits) are made to secure payment of such assessments and any interest thereon as provided in Section 4.08 hereof and costs of collection including reasonable attorneys' fees;

(e) that such continuing charge and lien on such Lot binds such Lot in the hands of the then Owner and such 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 Lot, 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;

(f) 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

(g) that all assessments (together with interest thereon as provided in Section 4.08 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or Lots owned by such Owner 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 Section 4.01(d) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by such Owner; 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.

4.02 Purpose of Assessment. Assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the Owners of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, enforcement of the Design Guidelines of the ACC, the enforcement of the Restrictions contained in this Declaration, the payment of operating expenses and capital expenses of the Association, the payment of any taxes on the Common Property and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to (i) 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; or (ii) 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.

4.04 Annual Assessment.

(a) The initial annual assessment shall be established by the Board prior to the first conveyance of a Lot from Declarant.

(b) Within thirty (30) days prior to the date of each annual meeting of the Association, the Board shall cause to be prepared an annual budget which shall set forth the reasonable, good-faith estimates of actual operating expenses of the Association for such year (including, without limitation, the compensation of any entity which is engaged by the Board to perform the duties imposed upon the Association hereunder) and shall include an amount to be set aside in a reserve fund which shall be equal to no less than one year's expenses reasonably expected for the Association's minimum operations and future maintenance, repair and replacement of the Common Property as required by the Development Code; provided, however, in no event shall the Board be required to provide for a reserve fund sufficient to cover all such future maintenance, repair and replacement of the Common Property, it being intended that a portion of such costs will be covered, from time to time, by special assessments. Based upon such annual budget, the Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Annual assessments may be established without the approval of the Members. The Board shall cause the Association to send a copy of the annual budget, together with a written notice of the annual assessment, to each Owner. Unless the Board shall otherwise determine, the annual assessment shall be payable within thirty (30) days from the due date specified in the notice of annual assessment. The Board

may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the year. In the event the Board fails for any reason to establish a budget for the succeeding year or to fix the annual assessment for any succeeding year, then the budget or the annual assessment in effect for the then current year shall continue until such time as an annual budget or annual assessment, as applicable, shall have been determined for such year.

4.05 Special Assessments for Working Capital Fund, Nonrecurring Maintenance and Capital Improvements. In addition to the annual assessments authorized by this Article IV, the Association may levy in any year and with such frequency as the Association shall deem necessary, one or more special assessments applicable to that year for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of nonrecurring maintenance, or the acquisition, construction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto. Such special assessments may be levied by the Board in any year without the approval of the Members.

To the extent the Association shall and does hold title to the Common Property, the Association will be subject to the imposition of ad valorem property taxes. If ad valorem taxes are levied against the Common Property and the Association lacks sufficient funds to pay such taxes, the Board may cause the Association to make a special assessment of Members pursuant to this Section 4.05 to pay all such taxes, together with any penalties and interest.

4.06 Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots; provided, however, if expenses of the Association benefit less than all of the Lots, then the Association may, in an equitable manner, specially assess all of the Lots so benefited, as determined by the Board.

4.07 Application to Builders and Declarant.

(a) Builders are subject to all initiation fees, annual assessments and special assessments applicable to Owners as set forth in this Declaration.

(b) For so long as Declarant has the right to appoint and remove any member of the Board of the Association and any officer or officers of the Association, Declarant shall not be liable for the payment of any initiation fee, annual assessment or special assessment; provided, however, during said period Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for any reserve fund) and the sum of initiation fees, annual assessments and special assessments collected by the Association in any year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

If Declarant is required by law or any other reason to pay assessments on Lots, the Declarant may contribute assessments due from it in services or materials, or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which the monetary assessments may be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If the Declarant and the

Association are unable to agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors, approved by the Declarant, who are in the business of providing such services and materials. If within ten (10) days after the date of the last bid so obtained the Association and Declarant are unable to agree on the value of the contribution based upon such bids, the value shall be deemed to be the average of the bids received from the independent contractors.

4.08 Effect of Nonpayment of Assessments. Any assessment which is not paid on or before the date due shall bear interest at such rate per annum as the Board may from time to time establish; provided, however, 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 of such Owner, 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.

4.09 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.

4.10 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint and remove members of the Board of the Association and any officer or officers of the Association.

ARTICLE V
SPECIAL PROVISIONS RELATING TO OCONEE COUNTY, GEORGIA
GOVERNMENTAL REQUIREMENTS

5.01 Private Street Regulations. Pursuant to the Unified Development Code of Oconee County, Georgia (adopted October 3, 2006), as same may be amended (the "Development Code"), the following provisions of Section 1008.06 of the Development Code, together with other relevant portions of the Development Code, (collectively, the "Regulations") shall apply to the Development; provided, however, the Regulations represent the minimum requirements as defined by Oconee County, Georgia, and this Declaration may impose more restrictive requirements herein or by subsequent amendment hereto.

(a) All lots that do not meet the requirements of Sec. 1012.07 must be located on a street or road. Private streets are available for use in the case of developments that wish to utilize entry gates, mixed forms of property ownership, new urbanist design standards or other nontraditional public road design requirements. These private streets will be owned and maintained by a mandatory Homeowners Association and not by Oconee County. Neither private nor public streets are necessary in a development that does not have separate lots, but only units, such as an apartment or condominium development. Internal driveways and parking lot aisles shall meet the requirements of the Parking and Loading Requirements Article of this Development Code.

(b) Private streets (other than private access drives), if approved by the County, shall meet all minimum geometric design requirements per International Fire Codes and all AASHTO design standards for that road's posted speed (unless modified in a PUD or master planned development under the provisions of Sec. 1003.12), but in no case shall the design speed be less than 15 miles per hour.

(c) Private streets (other than private access drives), if approved by the County, shall meet all construction requirements and standards that apply to public streets.

(d) Private streets shall be located within a separate parcel of land, no less than 60 feet wide, that is owned by the Homeowners Association for the development. The width shall include the private street, any drainage structures, sidewalks, or utilities, and must provide the same minimum width required for right-of-way for a similar public street.

(e) Private streets may not be located in an easement over multiple lots.

(f) The private street shall be located within an easement coincident with the parcel required under Sec. 1008.06. The easement must be recorded with each lot's deed and grant the right of vehicular access to every other lot served by the street, as well as the right to place public and private utilities therein.

(g) Road maintenance:

(1) The County will not maintain roadways, signs or drainage improvements on private streets. All developments utilizing private streets are required to have mandatory Homeowners Association. The HOA shall comply with all provisions of the Subdivisions and Planned Developments Article of this Development Code.

(2) As part of the mandatory Homeowners Association, covenants are required for any lots on a private street. Provisions for maintenance shall be included in the Homeowners Association covenants. The covenants shall set out the distribution of expenses, remedies for non-compliance with the terms of the agreement, right of use easements and other considerations. The covenants shall include the following items:

- (A) The covenants shall establish minimum annual assessments in an amount adequate to defray costs of ordinary maintenance and procedures for approval of additional needed assessments.
 - (B) The covenants shall include a periodic maintenance schedule.
 - (C) The covenants for maintenance shall be enforceable by any property owner served by the road or by the Homeowners Association established by the covenants.
 - (D) The covenants shall establish a formula for assessing maintenance and repair costs equitably to property owners served by the private road.
 - (E) The covenants shall run with the land.
 - (F) The covenants shall not be dissolved or be modified in any way so as to conflict with these regulations.
 - (G) Maintenance shall include, but not be limited to, road surfacing, shoulders, signs, storm drainage facilities and vegetation control.
 - (H) A notice that no public funds of Oconee County are to be used to build, repair or maintain the Private Road.
- (h) Owner's release:
- (1) At the time of purchasing property that is served by a private street, upon any sale or resale of a property, the purchaser shall acknowledge by execution of a release that the street is private and not maintained by the County, and that maintenance of the street is the responsibility of the Homeowner's Association. The release is to be prepared using a form acceptable to the County Attorney and shall be recorded with the Clerk of the Superior Court along with any warranty deeds.
 - (2) The final subdivision plat shall provide notification that all properties served by the private street are perpetually subject to the provisions of this Development Code regarding the owner's release upon any sale or resale of the property.
 - (3) Failure to execute such a release shall not relieve the purchaser of maintenance responsibility for the private street.

(i) Lot dimensional requirements:

For a property served by a private street:

- (1) The building setback, lot width and other dimensional requirements of the zoning district in which the property is located shall be measured from the private street parcel.
- (2) Land located within the private street parcel shall not be included in the area of the lot for the purpose of meeting the minimum lot area required by the zoning district in which the property is located.
- (3) The developer shall grant an exclusive and irrevocable access and utility easement to the County that is located coincident with the private street parcel.
- (4) The County may require additional easements for any utilities not located on the private street. All easements shall meet the minimum sizes required by the County.

(j) Other standards:

- (1) Where private streets intersect public streets, private streets shall meet the requirements of public streets including intersection offset requirements, deceleration and acceleration lanes, intersection gradients, and other applicable design and construction requirements of this Development Code.
- (2) The HOA shall provide all maintenance activities and related actions to ensure compliance with Oconee County's NPDES permit for stormwater discharges.
- (3) A private street subdivision shall meet all other requirements and standards that apply to public subdivisions, such as storm water runoff and detention requirements, the provision of utilities, sidewalks, and traffic and street name signs.
- (4) Private streets shall be denoted as such on the street name signs for each such street. Proposed streets, which are extensions of, or in alignment with, existing or other proposed streets, shall have the same name. Street names shall not duplicate or be phonetically similar to existing street names. The County requires a different standard for a public street name sign indicating that the street is "private" or "not maintained by the County."
- (5) The developer is to obtain the street signs from the County and install them to County specifications at the developer's expense.

- (6) Any gate placed across a private street that limits access to a subdivision or development shall provide for unimpeded access by emergency vehicles, governmental vehicles on official business, and delivery services including the U.S. Postal Service. Such gate shall be of breakaway or other construction acceptable to Oconee County. Accessibility to such gated communities shall comply with all standards and requirements of the County Fire Chief for access activation, including the following:
- (A) Programmable keypad with an emergency override code as assigned by the Fire Chief.
 - (B) Once the override code is used to open the gate, the gate will remain open until emergency personnel release the gate for normal use.
 - (C) Automatic opening of the gates in the event of power failure.
 - (D) Reassignment of an emergency override code without the approval of the Fire Chief is not allowed.

For purposes of this Section 5.01, section references used herein are to sections in the Development Code and terms used but not defined shall have the meanings assigned to such terms in the Development Code which is incorporated herein by reference thereto.

5.02 Private Street Assessment. Each Owner shall be required to pay an annual assessment by the Association for the maintenance, repair and replacement of the private streets, together with related signs, drainage improvements and other facilities, within the Development, and the amount of such annual assessment shall be subject to adjustment from year to year as determined by the Board and shall be included in the assessment(s) to be levied and collected by the Association as provided in Article IV of this Declaration. In all instances, such assessment shall be set at a rate adequate to defray costs of ordinary maintenance and repair and all other obligations of the Association related thereto. Pursuant to the Regulations, the following "formula" for equitably assessing the costs of any such maintenance, repair and replacement among Owners served by the private streets shall be utilized: **the annual assessment determined by the Board, from time to time, for the maintenance, repair and replacement of private streets, together with related signs, drainage improvements and other facilities, shall be fixed at a uniform rate for all Lots; provided, however, if expenses of the Association associated with such maintenance, repair and replacement benefit less than all of the Lots, then the Association may, in an equitable manner, specially assess all of the Lots so benefited, as determined by the Board.** The formula for calculating the assessment for such maintenance, repair and replacement costs by the Association may be amended from time to time, as needed, taking into account all reasonable factors, including, but not limited to, any Additional Property subjected to this Declaration as set forth in Article XI hereof which may be served by the private streets in the Development.

5.03 Private Street Maintenance. To comply with the Regulations as herein provided, private street maintenance shall be conducted, and a periodic maintenance schedule shall be adopted by the Association under the following terms and conditions:

(a) All road surfaces, shoulders, signs, storm drainage facilities, vegetation control, recreational amenities, and landscaping shall, whenever possible, and using good faith and reasonable due diligence, be kept and maintained in good condition at all times, pursuant to this Declaration, the regulations of Oconee County, Georgia, and reasonable rules and regulations adopted from time to time by the Association.

(b) The Association shall determine and adopt a specific periodic maintenance schedule for required maintenance, which may be amended from time to time; provided, however, on or before the final business day of each fiscal year, the Association shall cause an examination to occur as to potential maintenance needs for the Development.

(c) The Association shall make reasonable periodic examinations of the need for maintenance, repair or replacement of road surfaces, shoulders, signs, storm drainage facilities, vegetation control, recreational amenities, and landscape areas. Upon determining the need for such maintenance, repair or replacement, the Association shall undertake to complete same as soon as reasonably practicable.

5.04 Stormwater Detention Facilities. The Stormwater Facilities located on the Property shall constitute Common Property and shall be owned, maintained, repaired and replaced by the Association in accordance with the Development Code and this Declaration pursuant to the terms and provisions of the Stormwater Agreement. The Association shall perform inspections of the Stormwater Facilities and provide reports of all maintenance activities with respect to the Stormwater Facilities, submit copies of maintenance records, coordinate inspections to be performed by Oconee County, Georgia, personnel, and perform any other related actions to ensure compliance with stormwater discharges as more particularly set forth in the Development Code.

ARTICLE VI **ARCHITECTURAL CONTROL**

6.01 Purpose, Powers and Duties of the Architectural Control Committee. The purpose of the Architectural Control Committee (the "ACC") is (a) to administer and enforce the covenants and restrictions set forth in this Declaration; and (b) to assure the installation, construction or alteration of any Structure on any Lot is submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the standards of the Development, with the Design Guidelines, and with this Declaration; and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures.

6.02 Selection of the ACC. From the date of execution of this Declaration and continuing until Declarant no longer has the right to appoint and remove any member of the Board and any officer or officers of the Association pursuant to Article III of this Declaration, the ACC shall initially consist of the Declarant as the sole member; provided, however,

Declarant may, from time to time, appoint and remove additional Persons as members of the ACC. The ACC may, from time to time, engage (on behalf of the Association) third party service providers to the ACC, including design consultants, management companies and similar service providers having expertise to assist the ACC in the exercise of its powers and performance of its duties hereunder. Upon the expiration of the Declarant's right to appoint and remove any member of the Board or any officer or officers of the Association, a successor ACC shall be appointed by the Board.

6.03 Meetings. The ACC shall hold such meetings as required or allowed for the Board by the By-Laws.

6.04 Action of Members of ACC. Any member 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. The action of such member 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 the applicant to the ACC as provided herein. Written notice of the decision of such member shall, within thirty (30) 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 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 a majority of the members of the ACC with respect to such matter shall be final and binding.

6.05 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to review and approve, in its sole discretion, any proposed installation, construction or alteration of any Structure on any Lot, and the ACC shall have all the powers and duties necessary, suitable, convenient, or proper for, or in connection with, or incidental to, the accomplishment of such purpose. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures.

6.06 Design Guidelines.

- (a) The ACC may from time to time and in its sole discretion, adopt, promulgate, amend, revoke and enforce the Design Guidelines for the purposes of:
- (i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
 - (ii) governing the procedure for such submission of plans and specifications;
 - (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction,

location and size of Structures and all other matters that require approval of the ACC pursuant to this Declaration; and

(iv) assuring the conformity and harmony of external design and general quality of the Development.

(b) The ACC may publish copies of its current Design Guidelines in which case said copies shall be made readily available to Members and prospective Members of the Association and to all applicants seeking the ACC 's approval. Any adoption, promulgation, amendment, or revocation of the Design Guidelines shall not require an amendment to this Declaration pursuant to Article X hereof.

6.07 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, including painted or stained, in any way which changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC, all as set forth in the Design Guidelines. Such plans and specifications shall be in such form and shall contain such information as may be required by the ACC in accordance with the Design Guidelines.

6.08 Approval of Plans and Specifications. Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration and the Design Guidelines, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. 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 herein if such plan, 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 Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided, that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

6.09 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration and the Design Guidelines for any of the following reasons:

- (a) the failure to include information in such plans and specifications as may have been reasonably requested;
- (b) the failure of such plans or specifications to comply with the Design Guidelines;
- (c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development as set forth in Design Guidelines, or (ii) as to location to be incompatible with topography,

finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. The ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

6.10 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided and in accordance with the Design Guidelines. Failure by the ACC to take action as set forth in the Design Guidelines shall be deemed approval of such plans and specifications unless ACC has given applicant written notice of a delay and the reason therefor pursuant to the Design Guidelines.

6.11 On-Site Progress Review Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of the Design Guidelines; and neither the Association nor the ACC, nor any such agent thereof, shall be deemed to have committed a trespass or other unlawful act solely by entry or on-site review process, provided such on-site review process is carried out in accordance with the terms of this Section.

6.12 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 the ACC determines in its reasonable discretion that such a violation has occurred, the ACC shall notify the Association. If the Board agrees with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by hand delivery, overnight courier, or certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner has not taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 9.02 hereof.

6.13 Final Architectural Review Certification. Upon completion of the installation, construction or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC may issue a final architectural review document, identifying such Structure and Lot upon which such structure is placed, and stating that the plans and specifications have been approved and that such Structure acceptably complies with such plans and specifications on file with the ACC (a "Certificate of Compliance"). Any Certificate of Compliance issued in accordance with the provisions of this Section 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 of Compliance shall in no way be construed to certify the actual construction of Structure or of the workmanship, or to represent or warrant to anyone the quality, function or operation of the Structure or of any

construction, workmanship, engineering, materials or equipment. The issuance of the Certificate of Compliance shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation other than those of the ACC.

6.14 Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of reviews, inspections, and approvals performed pursuant to this Article VI. The fee shall be established from time to time by the ACC and published in the Design Guidelines.

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

ARTICLE VII

GENERAL COVENANTS AND RESTRICTIONS

7.01 Application. Except as otherwise herein expressly set forth, the covenants and restrictions contained in this Article VII shall apply to all Lots and to all Structures erected or placed thereon.

7.02 Concrete Sidewalks. The Owner (other than Declarant) of each Lot in the Development shall cause to be installed a concrete sidewalk along the property line(s) of such Lot which front on a street; provided, however, the foregoing obligation to install a concrete sidewalk shall not be applicable to the Owners of Lots 17, 18, 19, 20, 21, 22 and 23 with respect to the frontage of said Lots on Whistling Creek Crossing (it being understood that the Owner of each of Lot 17 and Lot 23 shall be required to install a concrete sidewalk along the frontage of said Lots on Malcom Estates Drive and Malcom Estates Ridge, respectively). Such sidewalk shall be installed concurrently with the construction of the driveway for the Residence on such Lot but shall, in any event, be installed within two (2) years after the date on which the Lot is purchased by such Owner. The Concrete sidewalk shall be not less than four (4) inches thick and four (4) feet in width and shall be installed three (3') feet behind and parallel to the curbs of the street(s). No certificate of occupancy shall be issued for the Residence on such Lot until such time that said sidewalk is constructed in accordance with this Declaration all necessary regulations and requirements.

7.03 Restriction of Use. Lots may be used for single-family residences only and for no other purposes provided that Declarant and its duly authorized agents, representatives and employees shall have an easement for the maintenance of signs, a sales office, a business office and models on the Property, together with such other facilities as, in the opinion of Declarant, may be reasonably required or convenient to the construction, completion, development or sale of the Lots so long as Declarant owns any Lot for sale; provided, however, that the foregoing shall not prevent so called mother-in-law suites from being constructed or utilized, as the term single-family is used to prohibit multi-family dwellings and non-residential use of a Lot. No dwelling shall be constructed, erected, placed, altered or maintained on any Lot consisting of less than 2,750 square feet of heated floor space for a one-story dwelling or 3,000 square feet of heated floor space for a two-story dwelling (with a minimum of 1,800 square feet of heated floor

space on the first floor). The foregoing minimum square footage requirement excludes basement area. No dwelling shall contain any exterior vinyl siding. Only brick, stone or other masonry material approved by the ACC shall be permitted as the exterior finish of a dwelling. No dwelling shall have concrete blocks as exposed finish material. Concrete blocks may only be used for foundations over crawl spaces and finished on exterior with material approved by the ACC. All dwellings built over a basement must have poured concrete wall foundations and such poured concrete walls must not be visible to the exterior above ground but must be finished on exterior with materials approved by the ACC. No dwellings may be constructed on a slab.

7.04 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision.

7.05 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 7.06.

7.06 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Design Guidelines of the ACC which shall include, without limitation, sodded grass front yards with an underground irrigation system.

7.07 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot. No contractor or Builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot.

7.08 Signs; Mailboxes.

(a) No signs whatsoever (including but not limited to political, commercial and similar signs) shall, without the ACC's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (1) such signs as may be required by legal proceedings;
- (2) not more than one "For Sale" or "For Rent" sign as to each Residence, displayed in a customary manner, provided that such sign shall be subject to any rules and regulations of the Association adopted with respect thereto; and, provided, further that if, at the

time of any desired use of such sign, the Association is making signs available for the use of Owners, the signs made available the by Association must be used; and

- (3) directional signs for vehicular or pedestrian safety in accordance with plans and specification approved by the ACC.

(b) No mailboxes or other receptacles for the receipt of mail by the United States Postal Service may be installed or maintained on any Lot. The Association shall maintain a separate mailbox for each Lot in the freestanding cluster box unit located on the Common Property of the Development.

7.09 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls, except for such fences or walls erected by Declarant on the Common Property. No fences or walls shall be erected in the front yard of any Lot, and the ACC may dictate the design and material of all fencing visible from the street. Nothing contained herein shall be construed to prohibit silt fencing during the period of construction of a Structure on the Lot.

7.10 Antennae, Etc. No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without the prior written approval of the ACC. No antennae shall be installed or used for the purpose of the transmitting of electronic signals.

7.11 Clotheslines. Solar Equipment. Garbage Cans. Etc. All clotheslines, equipment, "garbage" cans, woodpiles and solar equipment shall be kept screened from view within the Development by adequate planting or fencing and may be maintained only in the rear yard of a Lot.

7.12 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by such Owner, in good condition and repair, including, but not limited to, the repairing and painting (or other appropriate external care) of all Structures. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the date of receipt of said written notice, the Association shall have the Right to Abatement as provided in Section 9.02 hereof.

7.13 Commercial and Recreational Vehicles and Trailers; Other Vehicles. No commercial vehicle, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view within the Development. Passenger vehicles owned by residents shall be

allowed to be parked only within driveways and shall not be parked within the front or side yards. No passenger vehicles may be parked overnight on any street in the Development. Any passenger vehicles parked in the rear of a dwelling must be shielded from view within the Development.

7.14 Non-Discrimination. No Owner or Person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise made unavailable or deny the purchase or rental of any Lot to any Persons because of race, color, religion, sex, sexual orientation, gender identity, marital status, disability, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

7.15 Livestock and Poultry; Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times, when outside, be on a leash or within a permitted fence.

7.16 Solid Waste.

(a) No Person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property;

(b) Except during approved construction of a Structure on a Lot and as approved by the appropriate governmental authority, no Person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property;

(c) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened from view within the Development; and

(d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to Persons making such pick-up. At all other times, such containers shall be screened from view or enclosed in a manner set forth by the Association. Declarant, and at such time as Declarant no longer retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association, the Association, shall determine the company to be used for garbage pick-up and disposal throughout the Development, and all Owners shall use such company to the exclusion of any other company. The purpose of this restriction is to promote uniformity in containers and to reduce noise and visual pollution involved with garbage pickup to specific days and times for pickup. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be further established by the Association.

7.17 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community.

7.18 Leasing. An Owner may lease any Lot which has a Residence located thereon, but any such leasing shall be in strict compliance with this Section 7.18. Subject to applicable zoning ordinances, this Section shall not apply to any such Lot owned by the Declarant, nor to any such Lot owned by a former first mortgagee or secondary purchase money mortgagee in possession of such Lot following default. All leases shall be for only those purposes permitted under applicable zoning ordinances and shall be subject to the terms and conditions of this Declaration, the Articles of Incorporation, the By-Laws and the rules and regulations of the Association. The rules and regulations of the Association adopted by the Board with respect to leasing may provide for a reasonable limitation on the number of occupants of any such Lot. All leases shall be in writing. The Owner of any such Lot shall provide a copy of all leases to the Association and shall provide the lessee with copies of the Declaration, the By-Laws and rules and regulations of the Association, as each may be amended. All leases of any such Lot shall have a term of not less than twelve (12) months (excluding renewal or extension terms); short-term rentals are prohibited within the Development. No lease shall be for less than the entire Lot. The term "lease" as used herein shall include all leases, rental agreements, and other agreements for occupancy.

7.19 Rules and Regulations. Reasonable rules and regulations concerning the use of the Lots may be adopted, promulgated, revoked, made and amended from time to time by the Board of the Association. Copies of such rules and regulations and amendments thereto shall be furnished by the Board of Association to all Owners. Such rules and regulations shall be binding upon the Owners until and unless any such rule or regulation is specifically revoked, overruled and cancelled in a regular or special meeting of the Association by the vote of a majority of the Members entitled to vote thereon who are present in person or by proxy and voting at a meeting of Members duly called and held in accordance with the Bylaws of the Association and, during any period in which Declarant retains the right to appoint and remove any member of the Board of the Association and any officers or officers of the Association, by the Declarant. As provided by Article III hereof, the Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property by any Person, and as provided by Article X hereof, the Association may impose the costs incurred by the Association (together with interest thereon) to abate, extinguish, remove or repair any violation or breach of any such rules and regulations as determined by the Board.

ARTICLE VIII
EASEMENTS, ZONING AND OTHER RESTRICTIONS

8.01 Easements.

(a) Declarant hereby expressly reserves to Declarant, its successors and assigns 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 limitation, the following:

- (1) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone and other telecommunication facilities and other utilities and related

facilities;

- (2) the erection, installation, construction and maintenance of storm-water drains, 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;
- (3) 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; and
- (4) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.

(b) 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.

(c) Declarant hereby reserves for itself, its successors and assigns, across the Development shown on the Plat and across any subsequent phase or phases of the Development on Additional Property which may be subjected to the provisions of this Declaration as set forth in Article XI hereof, perpetual easements appurtenant to said property for the following uses and purposes:

- (1) ingress and egress by vehicular and pedestrian traffic over such drives, roadways, walkways and paths of the Development as shown on the Plat and on plats of survey of such Additional Property as may be subjected to the provisions of this Declaration as set forth in Article XI hereof (and such drives, roadways, walkways and paths as may be constructed in the future); and
- (2) installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewage, storm drainage, electricity, street lights, telephone and other telecommunication facilities, and other utilities and related facilities, including the right to use of same in common with the Owners in the Development shown on the Plat and on plats of survey of such Additional Property as may be subjected to the provisions of this Declaration as set forth in Article XI hereof (and wires, pipes, conduits, and other structures and facilities furnishing such utilities installed in the future for service to Owners in the Development).

(d) The easements created in this Article VIII are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Article VIII may not be amended without the written consent of the Declarant, its successors

and assigns.

8.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.

8.03 Declarant's Entry; Right to Maintain Lots.

(a) Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 8.01.

(b) Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all Lots owned by Declarant for the purpose of seeding such Lots for hay production, applying pesticides and fertilizers and harvesting standing forage. No bales may be left standing on the Lots for more than thirty (30) days after cutting. Declarant shall not use the Lots for the raising of cattle or other livestock as provided in Section 7.15. The rights of Declarant under this Section 8.03(b) shall cease at such time as Declarant no longer retains the right to appoint and remove any members of the Board of the Association and any officers or officers of the Association.

8.04 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 regulations of any governmental body. In the event of any 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 IX
ENFORCEMENT**

9.01 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, such Owner's legal representatives, heirs, successors and assigns.

9.02 Right of Abatement.

(a) In the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice 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 date of receipt of said written notice,

then the Association shall have the Right of Abatement; and

(b) The Right of Abatement, as used in this Section and in Sections 6.09 and 7.12 hereof, 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 of such entry and accordance with the provisions of this Section, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 18%, to be a binding personal obligation of such Owner enforceable at law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 9.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise to be imposed upon the Lot after such entry or whether arising from or imposed upon the Lot after such entry or whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

9.03 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 Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to accurately measure 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; 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.

9.04 Collection of Assessments and Enforcement of Lien.

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees;

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: to sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the courthouse in Oconee County, Georgia to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Oconee County, Georgia are published, all other notice being hereby

waived by each Owner, and the Association or any Person on behalf of the Association or its assigns may bid and purchase at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association or its assigns shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or its assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or its assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law; and

(c) EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH SUCH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OR THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

9.05 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, 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 X
DURATION AND AMENDMENT

10.01 Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law.

10.02 Amendments by Declarant.

(a) Declarant may unilaterally amend this Declaration subject to, and in accordance with, Article XI hereof.

(b) During any period in which Declarant retains the right to appoint and remove any member of the Board of the Association and any officer or officers of the Association, Declarant may unilaterally amend this Declaration by an instrument in writing filed and recorded in the Office of the Clerk of the Superior Court of Oconee County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event such amendment materially alters or changes any Member's right to the use and enjoyment of such Member's Lot or the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by each such Member affected thereby, or (ii) in the event that such amendment would materially adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 10.02(b) shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 10.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (A) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (C) if such amendment is required by an institutional or governmental lender, purchaser or guarantor 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 any Lot subject to this Declaration, (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (E) if such amendment is necessary to correct a clerical, typographical or scrivener's error in the drafting of this Declaration.

10.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 10.01 and Section 10.02 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 Members of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association;

(b) At such meeting, a resolution for the approval of an amendment may be proposed by either the Board or by the Members. During any period in which Declarant retains the right to appoint and remove any member of the Board of the Association and any officer or officers of the Association, or during any period in which Declarant has the right and option to

submit Additional Property to the provisions of this Declaration, any such amendment must be approved by the Declarant and by Members holding at least two-thirds (2/3) of the votes in the Association, exclusive of any vote or votes in the Association then held by Declarant, who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association; provided, however, that any amendment which materially adversely affects the security title and interest of any mortgagee must be approved by such mortgagee; and

(c) The approval by the required percentage of the Members and, where required, Declarant and any mortgagee, to any amendments of this Declaration shall be evidenced by their execution of such amendment, or in the alternative, and provided that Declarant does not then have the right to approve such amendment as a Class B Member of the Association, the sworn statement of the President and Vice President or the Secretary of the Association attached to or incorporated into the amendment executed by the Association, which sworn statement shall state unequivocally that the approval 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.

ARTICLE XI
ANNEXATION AND FUTURE DEVELOPMENT

11.01 Annexation. Declarant shall have the right and option, from time to time, without the approval of the Association or any Member, mortgagee or third party, to submit Additional Property to the provisions of this Declaration and thereby cause such Additional Property to become annexed to and a part of the Property. The right to annex Additional Property shall expire twenty (20) years after the date Declarant sells and conveys its last Lot shown on the Plat. Such annexation shall be accomplished by the filing and recordation in the Office of the Clerk of the Superior Court of Oconee County, Georgia, of an approved plat of survey depicting such Additional Property (subdivided into Lots) and an amendment to this Declaration entered into by the Declarant which causes the Additional Property to become a part of the Property. At such time as Declarant's right to annex Additional Property expires as set forth in this Section 11.01, no real property may be annexed to the Property unless such annexation is approved by at least a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

11.02 Development Plan.

(a) The Development is, at present, comprised only of the Property shown on the Plat. The real property set forth and described on **EXHIBIT "B"** attached hereto and made a part hereof (the "Future Development") adjoins the Development (as same presently exists) but the Future Development is not being submitted to the provisions of this Declaration at this time. Declarant may, but shall not be obligated to, (i) annex as Additional Property all, part or none of the Future Development as set forth in this Article XI, together with, or in lieu of, other Additional Property, (ii) develop all, part or none of the Future Development, together with, or in lieu of, other Additional Property as a separate subdivision or (iii) transfer and convey the property comprising the Future Development in one or more transactions.

(b) Notwithstanding any other provision contained herein to the contrary, including, without limitation, the provisions of Section 10.02 of this Declaration, and subject to applicable zoning regulations, Declarant shall have the right, until such time as Declarant's right to annex Additional Property expires as set forth in Section 11.01 above, to annex Additional Property according to the procedure set forth in Section 11.01, which Additional Property may be developed as single family dwellings, condominiums, or attached or detached townhomes. At the time of such annexation, Declarant shall determine, on an equitable basis, the proportional share of the assessments payable by and the number of votes allocated to such Additional Property, which determination will be based upon the degree to which the Owners of the Property have the right to use and are benefitted by the Common Property. Such determination shall be made by Declarant by an amendment to this Declaration, which shall not require the approval of the Association or any Member, mortgagee or third party.

ARTICLE XII
MISCELLANEOUS

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

12.02 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.

12.03 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.

12.04 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

12.05 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, an Owner, or any other Person, shall be in writing. Any such writing shall be (a) sent by United States Mail with sufficient postage, in which case any such writings shall be deemed delivered on the third (3rd) day following the day such writing is deposited in the United States Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case any such writing shall be deemed delivered on the date such writing is deposited with such courier or (c) sent by personal delivery, in which case such writing shall be deemed delivered upon receipt or refusal of delivery of such writing. Such writings shall be given to the parties at the following addresses:

Declarant: Malcom Bridge Estates, LLC
1280 Snows Mill Road
Bogart, Georgia 30622-2777
Attention: Manager

Owners: Each Owner's address as registered
with the Association in accordance
with the By-Laws

12.06 No 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.

12.07 Insurance. Insurance (other than title insurance) which shall be obtained by the Association shall be governed by the following provisions:

(a) **Types of Insurance.** The Association shall obtain and maintain the following insurance policies:

- (1) A multi-peril insurance policy covering the Common Property providing, at a minimum, fire and extended coverage, vandalism and malicious mischief, on a replacement cost basis in an amount not less than 100% of the full replacement cost of the Common Property within the Development. The name of the insured under such casualty insurance policy shall be stated as follows: "Malcom Bridge Estates Homeowners' Association, Inc. for the use and benefit of the individual Lot Owners in Malcom Bridge Estates." The amount of coverage of such casualty insurance policy shall be readjusted by reappraisal or reevaluation of the insured property, not less frequently than once every five years. Such casualty insurance policy shall contain the standard mortgagee clause which shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interest may appear.
- (2) A policy of public commercial liability insurance covering all of the Common Property. Such liability insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Lot Owners. Such liability insurance policy shall cover the Association, the Board of the Association, the officers of the Association, all agents and employees of the Association, and all Owners and other persons entitled to occupy any Lot or other portion of the Property, shall be for at least \$500,000.00 for injury including death to a single person, \$1,000,000 for injury or injuries, including death, arising out of a single occurrence and \$50,000.00 for property damage, with a cross liability endorsement to cover the Lot Owners as a group and shall include protection for damage to the property of others.

- (3) Such other insurance policies as the Board shall deem desirable for the benefit of the Association, its officers and directors or the Lot Owners.

(b) Minimum Qualifications of Insurance Carriers. Each policy of insurance which the Association is required to maintain under the provisions of this Declaration shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class A:VI or better and which is licensed to transact business within the State of Georgia.

(c) Minimum Qualifications of Insurance Policies. All policies of insurance which the Association is required to maintain under the provisions of this Declaration shall (a) not allow contributions or assessments to be made by the insurance carrier against the Owner of any Lot, or the holder of any mortgage upon any Lot, (b) not allow loss payments to be contingent upon any action by the insurance carrier's board of directors, policyholders, or members, (c) not include any limiting clauses (other than insurance conditions) which could prevent any Lot Owner or the holder of any mortgage upon any Lot from collecting insurance proceeds, and (d) contain or have attached a mortgage clause which provides that the insurance carrier shall notify in writing all holders of first lien mortgages on any of the Lots at least (10) days in advance of the effective date of any reduction in, cancellation, or non-renewal of such policies.

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 Lot Owners or mortgagees, and no Lot Owner shall be entitled to exercise his or her right to maintain any additional insurance coverage in such a way as to decrease the amount which the Association may have in force on the Property at any particular time.

(d) Proceeds on Account of Damage to Common Property. Insurance proceeds which shall be paid on account of damages to or destruction of any portion of the Common Property shall be held by the Association in a construction fund, which shall be used for the purpose of repairing, reconstruction or rebuilding the portion of such Common Property so damaged or destroyed, as provided in this Declaration. If it shall be determined in accordance with the provisions of this Declaration not to repair, reconstruct or rebuild the portion of the Common Property so damaged or destroyed, then the insurance proceeds paid on account of the occurrence of such damage or destruction to such portion of Common Property shall first be used to clean up and landscape the Common Property as necessary in view of the fact that such part of the Common Property is not to be repaired, reconstructed or rebuilt, and the remaining insurance proceeds shall be disbursed to the Lot Owners proportionally, such disbursement to be made payable jointly to the Lot Owners and their mortgagees. Notwithstanding anything contained in this Declaration, the Articles of Incorporation, the By-laws, or the Act which may be construed to the contrary, in no event shall any insurance proceeds paid to the Association on account of the occurrence of any fire or other casualty be deemed to be common profits.

ARTICLE XIII
MORTGAGEE PROVISIONS

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

13.01 Notice of Action. An institutional holder, insurer, or guarantor of a first mortgage which provides written request to the Association setting forth the name and address of such holder, insurer or guarantor, together with the Lot number in the Development which is the subject of such first mortgage, shall be an "eligible holder" for purposes of this Article XIII and will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development, 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 or longer; 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 this Declaration or the 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

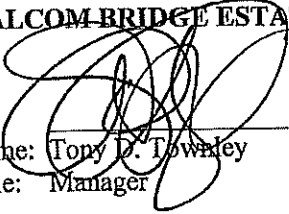
(d) any proposed action which would require the consent of a specified percentage of eligible mortgagees.

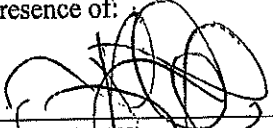
[Signature page to follow]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

MALCOM BRIDGE ESTATES, LLC

Signed, sealed and delivered in the presence of:

By:  (Seal)
Name: Tony D. Downley
Title: Manager


Unofficial Witness


Notary Public



EXHIBIT A

Property

All that tract or parcel of land situate, lying and being in the 1331st District, G.M., Oconee County, Georgia, on the westerly side of Malcom Bridge Road (80' R/W) containing a total area of 99.905 acres, including Lots 1 through 75, parcel designated "60' FUTURE STREET," Outlot A-1, Outlot A-2, "MALCOM ESTATES DRIVE (PRIVATE) 60' ACCESS/UTILITY EASEMENT," "MALCOM ESTATES COURT (PRIVATE) 60' ACCESS/UTILITY EASEMENT," "WHISTLING CREEK CROSSING 46' COMMON ACCESS DRIVE," "MALCOM ESTATES RIDGE (PRIVATE) 60' ACCESS/UTILITY EASEMENT," and "MALCOM ESTATES POINT (PRIVATE) 60' ACCESS/UTILITY EASEMENT," all as shown on that certain plat of survey entitled "FINAL PLAT FOR MALCOM BRIDGE ESTATES" by Baseline Surveying & Engineering, Inc., Matt D. Ulmer, Registered Land Surveyor, dated March 22, 2024 (in seven sheets), recorded in Plat Book 2024, pages 65-71, in the Office of the Clerk of the Superior Court of Oconee County, Georgia, which is incorporated herein by reference thereto.

EXHIBIT B

Future Development

TRACT ONE:

All that tract or parcel of land situate, lying and being in the 240th and 1331st District, G.M., Oconee County, Georgia, located on the westerly side of Malcom Bridge Road (80' R/W – 23' Paved) shown as "TRACT 1" containing 37.41 acres, more or less, on plat of survey entitled "ADMINISTRATIVE RECOMBINATION PLAT FOR: MALCOM BRIDGE ESTATES LLC", by Baseline Surveying & Engineering, Inc., Matthew D. Ulmer, Registered Land Surveyor, dated July 24, 2023, revised August 17, 2023, recorded in Plat Book 2023, page 123, in the Office of the Clerk of the Superior Court of Oconee County, Georgia, which plat is incorporated herein by reference thereto.

Tax Map Parcel B 03 008

TRACT TWO:

All that tract or parcel of land, together with all improvements thereon, situate, lying and being in the 1331st District, G.M., Oconee County, Georgia, located westerly of Malcom Bridge Road (80' R/W – 23' Paved) containing 2.01 acres, more or less, as shown on plat of survey entitled "PLAT FOR: FRAZER CREEK INVESTMENTS, LLC", by Baseline Surveying & Engineering, Inc., Matthew D. Ulmer, Registered Land Surveyor, dated May 31, 2018, recorded in Plat Book 2018, page 117, in the Office of the Clerk of the Superior Court of Oconee County, Georgia, which plat is incorporated herein by reference thereto.

Together with that certain non-exclusive perpetual easement thirty (30') in width for ingress and egress to and from the property hereinabove described and Malcom Bridge Road shown as "30' ACCESS EASEMENT" on said plat to which reference is hereinabove made.

Tax Map Parcel B 03 008A

TRACT THREE:

All that tract or parcel of land, together with all improvements thereon, situate, lying and being in the 240th District, G.M., Oconee County, Georgia, located westerly of Malcom Bridge Road (80' R/W – 23' Paved) containing 54.03 acres, more or less, as shown on plat of survey entitled "PLAT FOR: TOWNLEY FAMILY PARTNERSHIP, LLLP", by Baseline Surveying & Engineering, Inc., Matthew D. Ulmer, Registered Land Surveyor, dated June 29, 2018, recorded in Plat Book 2018, page 116, in the Office of the Clerk of the Superior Court of Oconee County, Georgia, which plat is incorporated herein by reference thereto;

Together with that certain "20' INGRESS-EGRESS EASEMENT" extending from the westerly side of Malcom Bridge Road to the property hereinabove described as shown on said plat to which reference is hereinabove made.

Tax Map Parcel B 03 007

TRACT FOUR:

All that tract or parcel of land, together with all improvements thereon, situate, lying and being in the 240th District, G.M., Oconee County, Georgia, containing 131.588 acres, more or less, on the easterly side of Clotfelter Road (variable width right of way) as shown on plat of survey entitled "BOUNDARY SURVEY FOR: TOWNLEY FAMILY PARTNERSHIP, LLLP AND FIRST AMERICAN TITLE INSURANCE COMPANY" by Carter Engineering Consultants, Inc., Michael Foley, Georgia Professional Land Surveyor, dated May 12, 2022, recorded in Plat Book 2022, page 74, in the Office of the Clerk of the Superior Court of Oconee County, Georgia, which plat is incorporated herein by reference thereto.

Tax Map Parcel B 02 074

TRACT FIVE:

All that tract or parcel of land, together with all improvements thereon, situate, lying and being in the 240th District, G.M., Oconee County, Georgia, containing 17.23 acres, more or less, on the easterly side of Clotfelter Road (a 100' R/W) as shown on plat of survey entitled "RETRACEMENT SURVEY FOR: TOWNLEY FAMILY PARTNERSHIP, LLLP AND FIRST AMERICAN TITLE INSURANCE COMPANY" by Carter Engineering Consultants, Inc., Michael Foley, Georgia Professional Land Surveyor, dated October 19, 2022, recorded in Plat Book 2022, page 154, in the Office of the Clerk of the Superior Court of Oconee County, Georgia, which plat is incorporated herein by reference thereto.

Tax Map Parcel B 02 075