



# **CANONGATE VILLAGE HOMEOWNERS ASSOCIATION**

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## **ARTICLES OF INCORPORATION BY-LAWS & COVENANTS (UPDATED SEPTEMBER 2018)**

Note : Every lot or home owner is responsible for understanding and following the By-Laws and Covenants listed in this official document. An electronic version of this document is available at [www.canongatevillage.org](http://www.canongatevillage.org)



OFFICE OF SECRETARY OF STATE

I, Max Cleland, Secretary of State of the State of Georgia, do hereby certify that

"CANONGATE VILLAGE HOMEOWNERS ASSOCIATION, INC."

has been duly incorporated under the laws of the State of Georgia on the 10th day of September, 1986, by the filing of articles of incorporation in the office of the Secretary of State and the fees therefor paid, as provided by law, and that attached hereto is a true copy of said articles of incorporation.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 10th day of September in the year of our Lord One Thousand Nine Hundred and Eighty Six and of the Independence of the United States of America the Two Hundred and Eleven.

Max Cleland

SECRETARY OF STATE  
CORPORATION COMMISSIONER

**DECLARATION OF COVENANTS, ASSESSMENTS, LIENS, CONDITIONS,  
RESTRICTION, AND EASEMENTS FOR CANONGATE VILLAGE, SECTION III**

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**CANONGATE VILLAGE  
HOMEOWNERS ASSOCIATION**

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**ARTICLES OF INCORPORATION**

Note : Every lot or home buyer is responsible for understanding and following the By-Laws and Covenants listed in this official document. An electronic version of this document is available at [www.canongatevillage.org](http://www.canongatevillage.org).

**ARTICLES OF INCORPORATION  
OF  
CANONGATE VILLAGE HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**Name**

The name of the corporation is Canongate Village Homeowners Association, Inc.

**ARTICLE II**

**Duration**

The corporation shall have perpetual duration.

**ARTICLE III**

**Applicable Statute**

The corporation is organized pursuant to the provisions of the Georgia Nonprofit Corporation Code.

**ARTICLE IV**

**Purposes & Powers**

The corporation (hereinafter sometimes referred to as the "Association") is not organized for, and shall not be operated for, pecuniary gain or profit. The purpose for which the Association is formed are:

- 1) To be constitute the Association to which reference is made in that certain Declaration of Covenants, Assessments, Liens, Conditions, Restrictions and Easements for Canongate Village, Section III (hereinafter the "Declaration") establishing a plan of development and recorded in Deed Book 411 at page 151 in the Office of the Clerk of the Superior Court of Coweta County, Georgia; to perform all obligations and duties of the Association and to exercise all rights and powers of the Association as specified in the Declaration and the By-Laws.
- 2) To provide an entity for the furtherance of the interests of lot owners in the development.

In furtherance of its purposes, the corporation shall have the following powers, which, unless indicated otherwise by the Declaration or By-Laws, may be exercised by the Board of Directors.

- 1) All of the powers conferred upon non-profit corporations by common law and the statues of the State of Georgia in effect from time to time.
- 2) All of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these articles, the By-Laws and the Declaration, including without limitation the following:
  - a. To fix and to collect assessments or other charges to be levied against the Lots and / or Lot owners; and,

- b. To manage, control, operate, maintain, repair and improve the Common Area(s) and any facilities located thereon, and property subsequently acquired by the Association, or any property owned by another, for which the Association by rules, regulation, the Declaration or contract has a right or duty to provide such services; and,
- c. To enforce covenants, conditions or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or By-Laws; and,
- d. To engage in activities which will actively foster, promote and advance the common interests of all Lot Owners in the Development; and,
- e. To buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real, personal and mixed property of all kinds and any right or interest therein for any purposes of the Association; and,
- f. To borrow money for any purpose except as may be limited in the Declaration or By-Laws; and,
- g. To enter into, make, perform or enforce contracts of every kinds and description, and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation or other entity or agency, public or private; and,
- h. To act as agent, trustee, or other representative of other corporations, firms or individuals, and as such to advance the business or ownership interest in such corporations, firms, or individuals;
- i. To adopt, alter and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, that such By-Laws may not be inconsistent with or contrary to any provisions of the Declaration.

The Foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; the powers specified in each of the paragraphs of this Article IV are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of this Article IV.

## **ARTICLE V**

### **Membership**

The corporation shall be a membership corporation without certificates or shares of stock. Each person owning a Lot (as defined in the Declaration) in Canongate Village, Section III shall automatically be a Member of the Association, which membership shall continue during the period of such ownership by such Lot Owner. Voting by the Members of this corporation shall be as set forth in and subject to the provisions of the Declaration.

## **ARTICLE VI**

### **Board of Directors**

The business and affairs of the corporation shall be conducted, managed, and controlled by the Board of Directors. The initial Board of Directors shall consist of three members, as follows:



W.A. Roquemore  
PO Box 217  
Lakeland, GA  
31635

Ben I. Copeland  
PO Box 214  
Lakeland, GA  
31635

Boyd Booker  
500 Pine Hill  
Road  
Griffin, GA 30223

The method of election and term of office, removal, and filling of vacancies shall be as set forth in the By-laws. The Board may delegate such operating authority to such companies, individuals, or committee as it, in its sole discretion, may determine.

## **ARTICLE VII**

### **Registered Agent & Office**

The initial registered office of the corporation shall be at 10 Brown Street, PO Drawer 1038, Newnan, GA, 30264, and its initial registered agent at such address shall be John M. Stuckey, Jr.

## **ARTICLE VIII**

### **Dissolution**

The corporation may be dissolved only as provided in the Declaration, By-Laws, and by the laws of the State of Georgia.

## **ARTICLE IX**

### **Amendments**

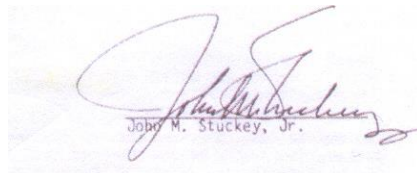
These Articles may be amended as provided by the Georgia Non-Profit Corporation Code, provided that no amendment shall be in conflict with the Declaration and provided further that no amendment shall be effective to impair or dilute any rights of Members or mortgagees that are governed by such Declaration.

## **ARTICLE X**

### **Incorporator**

The name and address of the incorporator is John M. Stuckey, Jr., Glover & Davis, P.A., Attorneys at Law, 10 Brown Street, PO Drawer 1038, Newnan, GA 30264.

IN WITNESS WHEREOF, the undersigned executes these Articles of Incorporation.



\_\_\_\_\_  
John M. Stuckey, Jr., Incorporator

### **CONSENT TO APPOINTMENT AS REGISTERD AGENT**

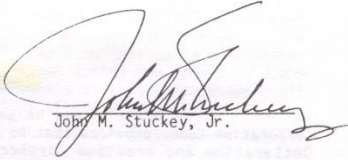
To: Honorable Max Cleland

Secretary of State  
Ex-Officio Corporations  
Commissioner  
State of Georgia

I, **John M. Stuckey, Jr.**, do hereby acknowledge my appointment and consent to serve as Registered Agent for CANONGATE VILLAGE HOMEOWNERS ASSOCIATION, INC., all pursuant to the provisions of the Georgia Nonprofit Corporation Code.

This 5<sup>th</sup> day of September, 1986.

THIS 5<sup>th</sup> day of September, 1986.



John M. Stuckey, Jr.

John M. Stuckey, Jr.

**Address of Registered Agent:**

10 Brown Street  
PO Drawer 1038  
Newnan, GA 30264

# **CANONGATE VILLAGE HOMEOWNERS ASSOCIATION**

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## **BY-LAWS**

Note : Every lot or home buyer is responsible for understanding and following the By-Laws and Covenants listed in this official document. An electronic version of this document is available at [www.canongatevillage.org](http://www.canongatevillage.org).

**BY-LAWS  
OF  
CANONGATE VILLAGE HOMEOWNERS ASSOCIATION, INC.**

[These By-Laws incorporated by this reference the Declaration of Covenants, Assessments, etc. for Canongate Village, Section III as defined in Article 1.1 below, and, unless the context clearly otherwise indicates, all capitalized words or terms utilized herein shall have the meaning assigned to them in said Declaration.]

**ARTICLE I  
MEMBERS**

**1.1 (a) Who are Members.** Those persons shall be Members of the Association who are determined to be such in accordance with the provisions of Article I of the Declaration. Wherever referred to in these By-Laws, the Declaration means the Declaration of Covenants, Assessments, Liens, Conditions, Restrictions and Easements for Canongate Village, Section III, dated July 29, 1986, and executed by Patten Seed Company, a Georgia corporation, with respect to Canongate Village, Section III and filed for record in Deed Book 411 at Page 153 in the Office of the Clerk of the Superior Court of Coweta county, Georgia, as such Declaration may be amended from time to time.

**(b) Suspension of Membership.** The Association Board may suspend the voting rights of any Member and the right of enjoyment of Common Property of any person who:

- (1) Shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article V of the Declaration; or,
- (2) Shall be in violation of any of the covenants and restrictions imposed by the provisions of the Declaration relating to the use, operation and maintenance of any Lot or any part of the Property; or
- (3) 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.

**EXHIBIT "D"**

**TO**

**Minutes of 1988 Annual Meeting of Members of the Canongate Village Homeowners Association, Inc.**

**1.2 Annual Meeting of Members.** The regular annual meeting of the Members shall be held, at such place within Coweta County, Georgia, as shall be designated in the call of the meeting, **on the third (3<sup>rd</sup>) Tuesday in the fourth (4<sup>th</sup>) month following the close of each fiscal year of the Association**, if not a legal holiday, and if a legal holiday, then on the next business day succeeding. The Members shall at such annual meeting elect a Board of Directors for the ensuing year, in the manner provided in these By-Laws, and shall have authority to transact any and all business which may be brought before such meeting; provided, however, that the first annual meeting of Members

Exhibit "D"

shall be held at such place within Coweta County, Georgia, and upon such date as the Developer may designate in the notice of same given pursuant to the provisions of Article 1.4 below.

- 1.3 Special Meetings of Members.** Special meetings of Members shall be held, at such place within Coweta County, Georgia, as shall be designated in the call of the meeting. Special meetings may be called by the President when so requested in writing by any two Directors or by ten (10) percent of the Members of either class of membership of the Association.
- 1.4 Notice of Meetings.** Written notice of the place, date, and time of every annual or special meeting of Members shall be mailed to each member, **not less than ten (10) days or more than sixty (60) days before such meeting.** Each Member shall register his address with the Association, and notices of meetings shall be mailed to him at such address; thereafter notice by publication as herein provided shall be sufficient notice to the Members for all purposes. If for a special meeting, notice shall state the object or objects of the meeting. It shall not be necessary that notice of an annual meeting specify the business to be transacted at such meeting, but such notice shall specify the number of Directors each class of membership is entitle to elect at such annual meeting.
- 1.5 Quorum.** A quorum at any meeting of Members, whether annual or special, shall consist of the presence at such meeting, in person or by proxy, of Members entitle to cast **one-tenth of the votes** of each Class of membership as certified by the Secretary of the Association. Unless otherwise provided in the Articles of Incorporation of the Association, or in the Declaration, or in the By-Laws, a majority vote of each Class of Membership present at a meeting shall be necessary and sufficient to decide and act upon any questions which shall come before the meeting. No business shall be transacted at any meeting unless a quorum is present.
- 1.6 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 these By-Laws and the provisions of the Declaration as each shall from time-to-time be in force and effect. Where any member is a group or entity other than one individual person, the vote on behalf of such Member shall be exercise only by such individual person as shall be designated in **a proxy instrument** duly executed by or on behalf of such Member and delivered to the Secretary of the Association.

## ARTICLE II

### DIRECTORS

- 2.1 Board of Directors.** Commencing with the election of Directors at the 1999 annual meeting of Members, the Board of Directors shall consist of seven (7) members, elected as follows:
- i. The membership at large shall elect three (3) Directors, each of whom shall hold office for a period of one (1) year;
  - ii. The membership at large shall elect four (4) Directors, each to represent one of the four (4) areas and to hold office for a period of two (2) years, provided, however, that the Directors from Areas 1 and 2 shall be elected for a period of one (1) year in 1999, so that thereafter only two (2) such Directors will be elected in any year.
- 2.2 Vacancies.** In the event of a vacancy as to any Director's position, the Board of Directors shall, within sixty (60) days of such position becoming vacant, hold a special meeting for the purpose of electing, by majority vote, a replacement Director. Upon election and taking office, such replacement Director shall serve until the expiration of the term of the Director whose position he or she was elected to fill."
- 2.3 Annual Meeting of Directors.** The annual meeting of the Board of Directors shall be held immediately after the annual meeting of Members, at the same place at which the annual meeting of

Members was held, as a matter of course and without notice, for the transaction of any business which may be brought before the meeting.

- 2.4 Special Meeting of Directors.** Special meetings of the Board of Directors shall be held, at such place within Coweta County, Georgia, as shall be designated in the call of such meetings. Special meetings of the Board of Directors may be called by the President at any time, in his/her discretion, and must be called by the President whenever so requested in writing by any member of the Board of Directors. Special Meetings of Directors may be convened and conducted by telephone conference call or other means of electronic communication. Action may be taken by the Directors without a meeting if such action is consented to in writing by all the Directors.
- 2.5 Notices of Meetings.** Notices of special meetings of the Board of Directors shall be given by the President or the Secretary to each member of the Board, not less than twenty-four (24) hours before the time at which such meetings are to convene. Said notices may be given by telephone, or by any other form of written or verbal communication. It shall not be necessary for notices of special meetings of the Board of Directors to state the purposes or objects of the meetings. The Directors may waive notice of any meeting.
- 2.6 Quorum.** A quorum at any meeting of the Board of Directors shall consist of a majority of the members of the Board. Unless otherwise provided in the Articles of Incorporation of the Association, or in these by-Laws, or in the Declaration, a majority of those present at any meeting at which a quorum is present may decide any questions which may come before any meeting.
- 2.7 Management Powers of Board of Directors.** The management of the Association shall be vested in the Board of Directors, which shall have and shall exercise, except as otherwise provided in the Association's Articles or in the Declaration, all of the powers and duties which the Association is authorized and required to exercise and perform.
- 2.8 Removal of Directors.** Any Director may be removed, with or without cause, by the class of membership that elected such Director by a majority vote of those Members of such class who are present in person or by proxy and voting at a special meeting of such class.
- 2.9 Compensation of Directors.** No Director shall receive compensation for any service he may render to the Association as a Director; however, any Director may be reimbursed for his actual expenses incurred in the performance of his duties as Director.

### **ARTICLE III OFFICERS**

- 3.1 Designation of Officers.** The Officers of the Association shall be appointed by the Board of Directors, and shall consists of a President, a Secretary, a Treasurer and such additional Officers, if any, as the Board of Directors may see fit to appoint at any time or from time-to-time. Each Officer shall serve at the will of the Board of Directors at all times, and may be removed from office by the Board of Directors at any time, with or without cause.
- 3.2 The President.** The President shall be the chief executive officer of the Association, and, subject to the direction and control of the Board of Directors, shall have general and active supervision and charge of all activities of the Association.
- 3.3 The Secretary.** The Secretary shall keep minutes of all meetings of the Members and Directors, shall maintain and have charge of the official register of the Members, and shall perform such other duties and have such other powers as may from time-to-time be delegated to him by the President or by the Board of Directors.

**3.4 The Treasurer.** The Treasurer shall be charged with the management of the finances of the Association, and shall have the custody and care of all funds of the Association, shall keep, or cause to be kept, full and accurate books of account and records of all fiscal and financial transaction of the Association.

**3.5 Compensation of Officers.** The Board of Directors shall have the authority to fix the compensation of Officers for their services.

Exhibit "D"

**ARTICLE IV**

**SEAL**

**4.1 Corporate Seal.** The corporate seal of the Association shall be in the following form, to wit:



and a seal in such form is hereby adopted as the corporate seal of the corporation.



**ARTICLE V**  
**MISCELLANEOUS**

- 5.1 The Declaration.** All provisions contained in the Declaration with regard to rights, powers and duties of the Association, the Members thereof, and the Board of Directors thereof, are hereby incorporated into these By-Laws by this reference, with the same effect as if such provisions were fully set forth herein.
- 5.2 Committees.** The board of Directors may from time-to-time to time establish such committees as it deems advisable, and the members of such committees shall be appointed by the Board of Directors, and shall serve subject to the will of the Board of Directors. Any member of any such committee may be removed from office at any time by the Board of Directors, with or without cause.
- 5.3 Books and Records.** The books and records of the Association shall at all times, during reasonable business hours, be open for inspection by any Member of the Association.
- 5.4 Interpretation.** In the case of any conflict between the Articles of Incorporation of the Association and these By-Laws, the Articles of Incorporation shall control. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.
- 5.5 Indemnification.** The Association shall indemnify any person made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he, his testator, or intestate, is or was a director, officer, or employee of the Association, against the reasonable expenses, including attorney's fees, actually and reasonably incurred by him in connection with the defense of the action, suit, or proceeding or in connection with any appeal in it. This right of indemnification shall not apply:
- 1) to any action, suit, or proceeding under the Securities Act of 1933 except payment of expenses incurred in the successful defense of such action, suit, or proceeding,
  - 2) in relation to matters as to which the director, officer or employee shall be adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the Association, or,
  - 3) in relation to matters in any such action, suit, or proceeding that are settled or comprised. The right to indemnification conferred by this Section shall not restrict the power of the Association to make any indemnification permitted by law.

**ARTICLE VI**  
**AMENDMENTS**

- 6.1 Amendments of By-Laws.** These By-Laws may be amended, repealed or altered, in whole or in part, only by a majority vote of those Members of both classes of Membership 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 these By-Laws, provided, however, that until the tenth (10<sup>th</sup>) anniversary of the filing of the Declaration, or until such time as the Developer has ceased to be a Class B Members of the Association (**Class B membership terminated; December 29, 2008**), whichever event is the earlier to occur, no amendment of these By-Laws shall become effective unless approved by the Developer in writing.

~ End of By-Laws ~

**CANONGATE VILLAGE  
HOMEOWNERS ASSOCIATION**

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**DECLARATION OF COVENANTS, ASSESSMENTS, LIEN  
CONDITIONS, RESTRICTIONS & EASEMENTS**

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**DECLARATION OF COVENANTS, ASSESSMENTS, LIEN CONDITIONS,  
RESTRICTIONS & EASEMENTS**

**CANONGATE VILLAGE, SECTION III**

THIS DECLARATION, made the 29<sup>th</sup> day of July, 1986, by PATTEN SEED COMPANY, a Georgia corporation (hereinafter the "Developer").

WHEREAS, Developer is the owner of certain real property lying and being in Land Lots 83, 110, 111 and 112 of the 6<sup>th</sup> Land District of Coweta County, Georgia, which property is more particularly described in Exhibit "A" attached hereto and by reference made a part hereof and which property is generally known as Canongate Village, Section III.

WHEREAS, Developer desired to provide for the preservation and enhancement of the property's value and for the maintenance of the property and improvements thereon, and to this end desires to subject the said property as more particularly described on Exhibit "A" hereto to the covenants, assessments, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of said property and each owner thereof; and,

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values in Canongate Village to create an agency to which can be delegated and assigned the powers of owning, maintaining and administering the common area and improvements thereon and administering and enforcing the covenants and restrictions and collection and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Developer has caused to be incorporated under the laws of the State of Georgia the Canongate Village Homeowners Association, Inc., a non-profit corporation, for the purpose of exercising the aforesaid functions.

NOW THEREFORE, Developer declares that the real property described on Exhibit "A" is and shall be held, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants, assessments, conditions, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I  
DEFINITIONS**

**Section 1. "Architectural Control Committee"** shall mean a standing committee of the Association whose member(s) shall be appointed by the Board of the Association.

**Section 2. "Association"** shall mean the Canongate Village Homeowners Association, Inc., its successors and assigns.

**Section 3. "Board"** shall mean and refer to the Board of Directors of the Association.

**Section 4. "Common Area"** shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners, including but not limited to the real property described on Exhibit "B" attached hereto and by the reference made a part thereof.

**Section 5. “Common Expenses”** shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be necessary and appropriate by the Board pursuant to the provisions of this Declaration and the By-Laws and Articles on Incorporation of the Association.

**Section 6. “Declaration”** shall mean the covenants, assessments, conditions, restrictions, liens and easements and all other provisions herein set forth in this entire document, as it may from time to time be amended.

**Section 7. “Developer”** shall mean and refer to Patten Seed Company, a Georgia Corporation, or any successor in title or any successor in interest to all or any portion of the Property then subject to this Declaration, provided in the instrument of conveyance to any such successor in the title or interest, such successor in title is expressly designated as the “Developer” hereunder by the grantor of such conveyance, which grantor shall be the Developer hereunder at the time of such conveyance.

**Section 8. “Lake”** shall mean and refer to Lake Canongate located on the Property and shown on the Plat, as well as any other lake property subject to the within covenants, assessments, conditions, restrictions, liens and easements.

**Section 9. “Lot”** shall mean and refer to all residential lots comprising Section III of Canongate Village as shown upon the Plat, as well as any future lots subject to the within covenants, assessments, conditions, restrictions, liens and easements by the Developer of Canongate village or any expansion thereof by Developer.

**Section 10. “Owner”** shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot which is part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

**Section 11. “Person”** shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

**Section 12. “Plat”**<sup>1</sup> shall mean and refer to that certain Plat of Survey prepared by Koon Woods & Associates, dated March 18, 1986, captioned “Preliminary Plat For Canongate Village Section III”, which Plat is filed in the Office of the Coweta County Building & Planning Department, located in Newnan, Coweta County, Georgia and all such revisions of said Plat and all other plats of the Property which may hereafter be made and recorded by the Developer in the Public Records of Coweta County, Georgia.

**Section 13. “Property”** shall mean and refer to that certain real property described in Exhibit “A” attached hereto.

**Section 14. “Resident Family Member”** shall mean any member of an Owner’s immediate family who is a full-time resident of a dwelling Structure on any Lot.

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<sup>1</sup> Referenced elsewhere in Declaration as Exhibit “A”.

**Section 15. “Structure”** shall mean and refer to:

- (i) anything 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 or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;
- (ii) any excavation, grading, fill ditch, diversion dam or other thing, object 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 alters in the natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and
- (iii) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) of this Section 14 applies to such change.

**Section 16. “Off-Street Parking”** shall mean and refer to any area paved with either concrete or asphalt on any Lot. **(Amended April 23, 2018)**

## **ARTICLE II MEMBERSHIP AND VOTING RIGHTS**

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

**Section 2. Voting Rights.** The Association shall have two classes of voting membership:

### **Class A**

Initially, the Class A members shall be all Owners, with the exception of the Developer, and each Owner shall be entitled to **one vote for each Lot** owned. When more than one Person holds an interest in any Lot, all such Persons shall be members, and, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. If multiple Owners of a Lot cannot unanimously decide how to cast their vote then no vote may be cast regarding the ownership by that particular Lot.

**ARTICLE III**  
**ARCHITECTURAL CONTROL COMMITTEE**

**Section 1. Purpose, Powers and Duties of the Architectural Control Committee.** The purpose of the Architectural Control Committee is to assure that the installation, construction, or alteration of any Structure on any Lot is in accordance with the covenants, conditions and restrictions set out in this Declaration and in conformity with standards determined by the Architectural Control Committee. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and everything necessary, suitable, convenient, or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

**ARTICLE IV**  
**PROPERTY RIGHTS**

**Section 1. Member's Easement of Enjoyment.** Subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area including, without limitation, the right of pedestrian (but not vehicular) access, ingress and egress to and from his Lot over those portions of the Common Area from time to time designated for such purposes, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (a) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area (including specifically the Lake); and,
- (b) the right of the Association to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon, and, upon the assent of two-thirds of the Class A members and the Class B members, if any, to give as security a security deed conveying all or any portion of the Common Area. The lien of any such encumbrance shall, however, be subject and subordinate to all rights, interests, easements and privileges herein reserved or established for the benefit of Developer, any Owner, or the holder of any security interest irrespective of when executed or given by Developer; and,
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded; and,
- (d) the easements reserved in Article VII of this Declaration.

**Section 2. Declaration of Use.** Any Owner may delegate his right of use and enjoyment in and to the Common Area, the improvements thereon and the Lake to his Resident Family Members, his tenants, guests, and invitees, subject to such regulations and fees as may be established from time to time by the Association.

**Section 3. Title to Common Area.** Title to the Common Area may be conveyed to the Association by the Developer after all Lots placed for sale by the Developer have been sold or at such earlier time as the Developer may elect, and only at such time shall the Association have the right to control said property subject to the terms herein.

**Section 4. No Partition.** There shall be no judicial partition of the Property or any part thereof, nor shall any Person acquiring any interest in the Property, or any part thereof, seek any such judicial partition unless the Property has been removed from the provisions of this Declaration.

## ARTICLE V

### COVENANT FOR MAINTENANCE AND CAPITAL IMPROVEMENT ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.**

Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, including interest thereon and cost of collection thereof including reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of any such Lot as of the time when any such assessment is levied. The personal obligation for delinquent assessments shall not pass to a Lot Owner's successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of the Lots and the costs and expenses incident to the operation of the Association, including without limitation the maintenance and repair of the Common Area and improvements thereon, the maintenance of services furnished by the Association, the purchase of insurance by the Association, the repair and replacement of improvements on the Common Area, payment of all taxes, insurance premiums and all costs and expenses, incidental to the operation and administration of the Association including attorney's fees and the establishment and maintenance of a reasonable reserve fund or funds.

**Section 3. Computation of Annual Assessments.** It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association for the coming year, such budget to include a capital contribution or reserve account in accordance with the capital needs of the Association. The budget and the proposed annual assessments to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual meeting. The aggregate Common Expenses shall be equally divided among the Lots so that the annual assessment shall be the same for each Lot not designated on the Plat as WS or WN (Waterfront South or Waterfront North). **The annual assessment for each lot designated WS and WN shall be that of each other Lot plus an additional \$100.00.**

The budget and the annual assessments shall become effective unless disapproved at the annual meeting by a vote of a majority of the Owners voting in person or by proxy at such meeting on the date

when there is no longer a Class B member. In the event the proposed budget is not approved, or, in the event the Board fails for any reason to determine the budget for the next succeeding year, then until a budget has been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

**Section 4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members of each class voting in person or by proxy at a meeting duly called for such purpose. Special assessments shall be the same for each lot.

**Section 5. Notice for Any Action Authorized Under Section 3 and 4.**

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting.

**Section 6. Rate of Assessment.** (Class B member terminated, December 29, 2008).

**Section 7. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on June 1, 1987. Developer shall fund any deficit which may exist between assessments and the annual budget for as long as there is a Class B member of the Association. The due dates shall be established by the Developer until there is no longer a Class B member and then by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a specified Lot shall be binding upon the Association as of the date of its issuance.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessments which are not paid when due shall be delinquent. **If the assessment levied against any Lot is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum legal rate per annum.** In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment and may bring an action at law against the Owner personally obligated to pay the same, **or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment.** Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage foreclosure on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with the foreclosure of said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid for the interest foreclosed at any foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, abandonment of his Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.



**Section 9. Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed, or security deed representing a first lien on said property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 10. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated to and accepted by any local public authority and devoted to public use; (b) all Common Area; (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges, or liens.

## **ARTICLE VI MAINTENANCE**

**Section 1. Association's Responsibility.** Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area and improvements thereon. The Association's responsibility with respect to the Common Area shall be deemed to include the maintenance, repair, and replacement of:

- (i) all roads, driveways, walks, parking areas and buildings and other improvements situated within the Common Area,
- (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area,
- (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area, and, (or) the Lake.

## **ARTICLE VII EASEMENTS**

**Section 1. Utility Easements.** There is hereby created in favor of the Association an easement upon, across, over, through, and under all of the Lots and Common Area for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and systems, including but not limited to water, sewer, gas, telephones, electricity, television cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association, to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area and the Lots, as provided herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Developer or thereafter approved by Developer or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable instrument, Developer or the Association shall have the right to grant such easement on the Common Area without conflicting with the terms hereof.

**Section 2. Easement for Developer.** Developer hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, on, over, under and through any part of the Property and the Common Area for so long as Developer owns any Lot primarily for the purpose of sale:

- (a) For the erection, installation, construction and maintenance of wires, lines and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables and other utilities; and,
- (b) For the construction of improvements on the Lots; and,
- (c) For the installation, construction and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility; and,
- (d) For the use of the Common Area and any sales offices, model units and parking spaces in connection with its efforts to market Lots; and,
- (e) For the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots; and,
- (f) For lake access for maintenance of portions of the Property abutting lakes, which easements may be transferred to the Association.

**Section 3. Easements for Association.** There shall be a general right and easement for the benefit of the association, its directors, officers, agents and employees, including any management company retained by the Association, to enter upon the Common Area and the Lots to perform their respective duties.

**Section 4. Flood, Wave Action and Pedestrian Easements.** For the purposes of this Article VII, Section 4, the "Normal High Water Level" of Lake Canongate shall be considered to be **915' above mean sea level**. On all Lots designated WS or WN on the Plat (Waterfront South or Waterfront North) there is reserved to the Association the following easements on which no above ground structure or obstacle may be built or placed:

- (a) A flood easement covering all that portion of each Lot at or below the 920<sup>1</sup> mean sea level contour; and,
- (b) A wave action easement extending from the shoreline at Normal High Water Level a distance of ten feet onto each Lot; and,

**Section 5. Shoreline Easement for Developer Access & Association Maintenance.**

On all Lots designated WS or WN on the Plat (Waterfront South or Waterfront North) there is reserved to the Association and to the Developer an easement extending from the shoreline at Normal High Water Level (as defined in Section 4 hereinabove) **a distance of twenty (20) feet into each Lot to be used only by the Association and/or Developer for the purpose of maintaining and preserving the Lake**, but, not for the purposes of pedestrian traffic or any other purpose not necessary for the proper maintenance and preservation of the Lake.

## ARTICLE VIII

### GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

**Section 1. Residential Use.** All Lots shall be restricted exclusively to single-family residential use; provided, however, that nothing herein shall be construed to prohibit or prevent Developer or any builder of residences in Canongate Village from using any Lot owned by Developer or such builder for the purpose of carrying on business related to the development, improvement and sale of Lots and/or new homes in Canongate Village.

**Section 2. Common Area.** The Common Area shall be used by the Owners and their agents, servants, tenants, family members, invitees and licensees for such other purposes as may be authorized by the Association; however, in no event shall any Owner or any other party have the right to build docks or other structures or use motorized crafts on the Lake except as approved under Sections 10 and 11 hereof.

**Section 3. Debris.** No rubbish, garbage/trash, or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of an Owner's Lot so as to render the same unsanitary, unsightly or offensive. In addition, grass, underbrush, and trees on undeveloped lots shall be properly maintained as stated herein. No nuisance (defined as inconvenient, annoying, or bothersome) or health hazard shall be permitted to exist upon any portion of the Property.

**Section 4. Erosion Control.** No activity (adding or removing dirt, grading, or drainage modifications) which may create erosion or siltation problems shall be undertaken on any Lot, except for the initial construction of residences and development of the Property, without first having been submitted to and approved by the Architectural Control Committee.

**Section 5. Signs.**

(a) No signs whatsoever shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings; or,
- (ii) not more than one "For Sale" or "For Rent" sign, provided, however, that in no event shall any such sign be larger than four square feet in area; or,
- (iii) directional signs for vehicular or pedestrian safety.

(b) Within forty eight (48) hours following the consummation of the sale of any Lot or the renting of any Structure, the sign located thereon as permitted in subsection (ii) above shall be removed.

**Section 6. Fences.** No chain link or cyclone fences may be placed on the Property. Aluminum, brick, stone, wood, and wrought iron, appropriately maintained and conforming in design and quality with the dwelling shall be permitted. Fence height shall typically be no less than four feet or no greater than six feet, or such other height as approved by the Architectural Control Committee.

**Section 7. Clotheslines.** No outside clothesline shall be placed on any Lot.

**Section 8. Trucks, Recreational Vehicles and Trailers.** No trailers of any kind, trailer houses, boats, other recreational vehicles, or trucks larger than a pick-up truck shall be parked on any Lot (or at the curb or on the street in front of any Lot), except in garages or behind screening so as not to be visible from the street or other Lots. Any screens shall conform to the exterior design and quality of the dwelling on the same Lot. Nothing contained herein shall prohibit the use of portable or temporary buildings or trailers as field offices by contractors during actual construction.

**Section 9. Recreational Equipment.** No recreational and/or playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot.

**Section 10. Boats Permitted and Prohibited on Lake Canongate.** Only Owners and their Resident Family Members, (except the agents or contractors of Owners or the Developer when such boats are essential to construction or maintenance), may launch, sail or otherwise use a boat on Lake Canongate. The only type boats permitted shall be row boats, sail boats and boats propelled by battery powered electric motors of no more than three horsepower. Boats propelled by any type internal combustion engine, boats longer than 26 feet and all types of floating rafts are prohibited, and shall not be placed upon the Lake for any purpose.

**Section 11. Piers, Docks, Sea Walls, Anchorage and Boat Launching Devices.** No pier, dock, or similar structure or facility of any type may be built, erected, or installed in or upon the shoreline of the Lake until complete plans and specifications therefore have been submitted to the Architectural Control Committee and approved in writing by same.

No boat, raft or floating dock or pier may be permanently anchored on the Lake without written approval of the Architectural Control Committee.

At the time of the recording of this Declaration it is the intent of the Developer that during such time as Developer controls the Architectural Control Committee permits for such devices and facilities will be approved only if same in no way detract from the appearance of the total development in general, the Lake in particular, or the appearance of, or the view from, any Lot in the development, and then only if such creates no hazard or safety concern.

The Architectural Control Committee may deny approval without cause for any of the structures, facilities, or anchorage enumerated in this Section, and the ownership of any Lot or group of Lots creates no inherent right to build, erect, or install such facility or device.

**Section 12. Accessory Structures.** A detached accessory structure may be placed on a Lot to be used for a playhouse, a swimming pool, tennis court, a tool shed, a mailbox, a dog house or a garage; a garage may also be an attached accessory structure. Such accessory structures shall not exceed twenty (20) feet in height and shall conform in exterior design and quality of the dwelling on the same Lot. Front-entry garages, whether they are detached or attached accessory structures, shall not be permitted. With the exception of a garage that is attached to a dwelling, and a mailbox, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot. All such accessory structures shall also be located within such side and rear setback lines as may be required hereby or by applicable zoning law.

**Section 13. Improvement of Lots.** All construction of dwellings, accessory structures and all other improvements in Canongate Village, Section III shall be undertaken and completed in accordance with the following conditions:

- (a)** All construction shall be carried out in compliance with the laws, code, rules, regulations, and orders of all applicable governmental agencies and authorities.
- (b)** Concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot.
- (c)** Only one mailbox shall be located on any Lot, which mailbox shall be selected to be consistent with the quality and design of surrounding dwellings and mailboxes and shall be placed and maintained to compliment the dwelling to which it is appurtenant to the extent such mailbox is permitted to be located and maintained by the United States Postal Service, its successors and assigns.
- (d)** No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot, nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.
- (e)** No exposed above-ground tanks for storage of fuel or water or any other substance shall be located on any Lot. In the event an apparatus relating to solar or other alternative energy generation is desired, the location, and screening must first be approved by the Architectural Control Committee.
- (f)** Adequate off-street parking shall be provided for each lot. Vehicles may not be parked consistently on the street for more than 24 hours, and shall not impede traffic flow.
- (g)** All garages must have doors, and each garage door must be coordinated in design and color with the dwelling to which it is appurtenant.
- (h)** Any construction on a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot shall be responsible for any damage to any curbing or street resulting from construction on such Lot; repairs of such damage must be made within thirty (30) days after completion of such construction.
- (i)** For a one-story residence located on any Lot, the enclosed heated floor area (exclusive of garages, carports, porches, terraces, bulk storage and basement) shall not be less than 2,000 square feet; and for one-and-one half, two or two-and-one-half story residence, the heated ground floor areas shall not be less than 1,500 square feet. The Architectural Control Committee may, for aesthetic, engineering or construction reasons, approve, by written certificate, an exemption from the requirements of this paragraph to provide for a lesser space of heated floor area, with the provisions, however, that no exemption shall provide for less than 1,800 square feet of heated floor area for a one-story structure, or 1,400 square feet of ground floor heated area for a one-and-one-half or two story structure; and, further provided that no such exemption may be granted unless a structure with less than 1,500 square feet of heated ground floor area contains an aggregate total of 2,200 square feet of heated area on all floors. No building shall be constructed exceeding three stories in height, including basement, on any Lot.
- (j)** Exterior antennas shall be permitted on any Lot provided they are in compliance with Federal Communication Commission Over-the-Air Reception Devices Rule (47 CFR § 1.4000) as amended. Antennas shall only be used to receive direct broadcast satellite service, including direct-to-home satellite service, TV and wireless cable signal or to receive or transmit fixed wireless signals via satellite and must be less than one meter (39.37") in diameter.

- (k) Prior to occupying a newly constructed home, the lot owner must take steps to insure that the front and sides of the lot extending to the rear construction line of the building have been graded and seeded, sprigged or sodded satisfactorily with a permanent lawn grass. Bermuda, Blue-grasses, Centipede, Fescue, or Zoysias are all acceptable as 'permanent' lawn grasses. Rye grasses are not acceptable except when over-seeded on one of the named permanent grasses.
- (l) The foundation front of dwellings on all lots shall be landscaped with a reasonable amount of shrubbery which is complimentary to the general landscaping at Canongate Village.
- (m) All driveways shall be paved with concrete or asphalt.

**Section 14. Animals.** No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. Under no circumstances may goats, chickens, pigs or other forms of livestock be kept on any Lot. No animal shall be allowed to become a nuisance, and the Association may arbitrarily prohibit the keeping of any animal of any type on any Lot.

## ARTICLE IX GENERAL PROVISIONS

### **Section 1. Enforcement**

- (a) The Association, the Architectural Control Committee, the Developer or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- (b) The Association acting through the Architectural Control Committee shall have the right of abatement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any restriction contained in this Declaration within **twenty (20) days** after the mailing of written notice of such violation or breach. The right of abatement granted hereby means the right of the Architectural Control Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation or breach exists, and to take such action or actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions.
- (c) In addition to any other remedies which may be authorized herein or in the Bylaws, the Association shall have the right to impose fines to enforce compliance with the provision of the Declaration, the Bylaws, and the rules and regulations of the Association. No fine shall be assessed until and unless the following procedure has been followed:
  - 1) Notice of violation shall be sent to the Owner, specifying the nature of the violation, the action needed to abate the violation, and providing the Owner with at least ten (10) days from the date of the notice to abate the violation. If, after twenty (20) days of the mailing of the written notice, the Owner has not, abated, remedied, removed, repaired or otherwise corrected the violation as provided in the notice, a fine of \$50.00 may be assessed to the Lot which shall also become the personal obligation of the Owner(s) of said Lot. The fine shall be due and payable upon assessment of same by the Board of Directors with the approval of the Architectural Control Committee and a Homeowner's Review Sub-Committee consisting of no less than five (5) representatives of Lots who are not currently on the Board of Directors or the ACC, qualified by a majority vote of all three entities.

For non-continuing violations, the notice of violation shall specify the violation and the amount of the fine to be assessed after ten (10) days of the notice. The expressed intent of this provision is to permit the Association to impose fines for violations that are incapable of being cured or difficult to cure.

2) The Owner shall have ten (10) days from the date of the violation notice provided above to submit a written request for a hearing before the Board of Directors to contest the violation, the fines, or to request reconsideration of the fine. Fines may be assessed regardless of the Owner's right to request a hearing before the Board.

3) In the event of a continuing violation the Association's notice of violation may provide for a per diem fine of \$25.00 which continues for as long as the violation remains unabated.

4) The Board of Directors shall also be empowered to suspend the voting rights of the violating Owner, as provided in Article I, Section (b) of the Bylaws, for violations of the Declaration, the Bylaws, and rules and regulations and for non-payment of fines imposed pursuant to this Article IX, Section (c). Fines shall be collected in the same manner as assessments, and shall include recovery of reasonable attorney's fees incurred by the Association for such collection action.

5) All fines shall be assessed by the Board of Directors. To the extent the ACC or any committee established by the Declaration or by the Board of Directors has authority to enforce the Declaration, the Bylaws, and the rules and regulations of the Association, such committee shall communicate violations to the Board of Directors. Upon receipt of notification of a violation, the Board of Directors is authorized to impose fines if it agrees with the committee's determination. **(Amended April 23, 2018)**

**Section 2. Severability.** If any provision of this Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

**Section 3. Headings.** The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles and sections.

**Section 4. Duration.** The covenants, assessments, liens, conditions, restrictions and easements imposed by this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is filed for record with the Clerk of The Superior Court of Coweta County, Georgia recorded, at the end of which period all of such shall be automatically extended for successive periods of ten (10) years each, unless at least two-thirds (2/3) of the Owners at the time of the expiration of said initial period, or of any extension period, shall sign an instrument in which said covenants, assessments, liens, conditions, restrictions and easements are removed or modified in whole or in part, which instrument shall be filed for record in the appropriate county and in the manner then provided by law.

**Section 5. Rights and Obligations.** Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all assessments, restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this

Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in the Property or any portion thereof, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

**Section 6. Notices.** Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his Lot (according to the then current system of street addresses prescribed by the governmental entity having jurisdiction over the premises) or at such other address as may be shown upon the membership rolls of the Association. Notices to the Association or Board shall be in writing and shall be addressed to the President of the Association at his/her residence address as shown on the membership rolls of the Association. Any Owner may designate a change of address for notices to him/her/it by giving written notice to the Association. Notices addressed as above shall be deemed delivered upon posting with The United States Post Service, or any official successor entity, registered or certified mail, postage prepaid, or when delivered in person.

**Section 7. Amendments.** This Declaration may be amended unilaterally, and without any other required approval(s), at any time and from time to time by the Homeowners Association Board of Directors.

- (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith,
- (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration,
- (iii) if such amendment is required to obtain the approval of this Declaration by an institutional lender, such as a bank, savings and loan association, or life insurance company or by a governmental lender or purchaser of mortgage loans, such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make purchase mortgage loans on the Lots subject to this Declaration,
- (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration, or,
- (v) if the Homeowners Association Board of Directors, in sole discretion, elects to do so in order to incorporate a revision to the Plat, or to subject any other property to the terms and conditions hereof. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least **a majority (50 percent plus one)** of the Owners of Lots. In the event the Lot Owner is either a builder, property developer, or other nonresidential Owner, those Lot Owner's vote(s) shall be equal to the number of Lots owned. No amendment to the provision of this Declaration shall alter, modify, change, or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot or the Common Area affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Every purchaser or grantee or any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that this Declaration may be amended as provided in this Section. **(Amendment 6, December 29, 2008).**

## ARTICLE X

### COVENANTS RESPECTING LOTS ABUTTING I-85

**Section I. Plan Approval.** No building, structure, fence, wall, walkway, or other improvements of any kind shall be installed, erected or placed on any Lot abutting Highway I-85 (a "Highway Lot"), nor shall any excavation or alteration of a Highway Lot be commenced, nor shall any landscaping on a Highway Lot be undertaken, materially changed, or altered (including the removal of any tree having a diameter at breast



height measuring eight (8) inches or larger), until the plans and specifications therefor have been submitted and approved by the Architectural Control Committee (the "ACC"). Such plans and specifications shall include and show the nature, color, type, shape, height, materials, location, and such other aspects of the proposed improvements as may be requested by the Association.

**Section 2. Standards and Procedures.** The Association shall promulgate and publish standards for the ACC which set forth the criteria required to be observed in preparing such plans and specifications and the procedures to be followed in obtaining approval. Following approval of any plans and specifications by the ACC, representatives of the ACC shall have the right during reasonable hours to enter upon and inspect any Highway Lot to determine whether or not the plans and specifications therefore have been approved and are in compliance with previously approved plans and specifications. Every effort shall be made to protect natural or planted vegetation to accomplish visual and sound screening.

**Section 3. Decisions Final.** The refusal to approve such plans and specifications may be based upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the ACC Committee, shall be deemed sufficient. In the event there is a failure to approve or disapprove such plans and specifications within thirty (30) days after the plans and specifications have been submitted, they shall be deemed approved.

**Section 4. Violations.** In the event any Owner violates the terms of this Article, the Association, after ten (10) days written notice to such Owner to cure such violation and the failure of such Owner to so cure, shall be entitled to all enforcement rights which the Association may have in law or equity for a breach or a violation of the terms of this declaration.