

## **Buckhead North Subdivision Declaration of Covenants, Conditions and Restrictions**

This is an integrated version of the Declaration, including the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Amendments, but is an unrecorded version. The recorded Declaration and Amendments, as recorded in the Bryan County, Georgia Records represents the legally binding covenants for Buckhead North Subdivision

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**STATE OF GEORGIA                    )        BUCKHEAD NORTH SUBDIVISION**  
**)        DECLARATION OF COVENANTS,**  
**COUNTY OF BRYAN                    )        CONDITIONS AND RESTRICTIONS**

**SHADOW MOSS PHASE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“Declaration”), made on this date hereinafter set forth by DB&B, LLC, (“Declarant”)

**WITNESSETH THAT:**

WHEREAS, Declarant is the owner of certain property in Bryan County, Georgia, more particularly described in Article II, Section 2 hereof and hereinafter the “Existing Property;” and

WHEREAS, Declarant owns and has the right to acquire title to the property described in Article II, Section 1 hereof and hereinafter the “Additional Property;” and

WHEREAS, Declarant has deemed it desirable for the efficient preservation, protection and control of the Existing Property to create an agency to which will be delegated and assigned certain powers of owning, maintaining and administering the Existing Property and administering and enforcing these Covenants, Conditions and Restrictions, and collecting and expending for the purposes set forth herein the Assessments hereinafter described; and

WHEREAS, it is in the interest and to the advantage of the Declarant and to each person, corporation, partnership or other entity, which shall hereafter acquire title to any Lot within the Existing Property that certain covenants, conditions and restrictions be imposed upon the Existing Property;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Declarant does hereby declare that all of the Existing Property shall be held, transferred, sold, conveyed and occupied subject to the easements, restrictions, covenants, charges, liens and affirmative obligations and conditions hereinafter set forth, all of which are for the purpose of protecting the value, desirability and attractiveness of the Existing Property, and which shall run with the Existing Property and be binding on all persons having or hereafter acquiring any right, title or interest in the Existing Property, or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

**ARTICLE I**  
**Definitions**

The following words and terms, when used in this Declaration, or any supplemental declaration, shall have the following meanings:

**Section 1:** “Additional Property” shall mean and refer to that real property described in **Article II, Section I** hereof.

**Section 2:** “Board of Directors” shall mean the Board of Directors of the Club.

**Section 3:** “Club” shall mean and refer to Buckhead North Homeowners Association, Inc., a Georgia non-profit corporation, its successors and assigns.

**Section 4:** “Common Area” shall mean any area shown on the Plat as “Common Area”. These areas are intended for protection of vegetation and trees and to provide a habitat for wildlife that will benefit all Owners and Members of the Club.

**Section 5:** “Declarant” shall mean and refer to DB&B, LLC or any person or entity that is named its assignee in a document recorded in the Office of the Clerk of Superior Court of Bryan County, Georgia. Any such person or entity shall be entitled to exercise all rights and power conferred upon Declarant by this Declaration, the Articles of Incorporation or By-Laws of the Club.

**Section 6:** “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions.

**Section 7:** “Design Review Committee” (“DRC”) shall mean the Committee established pursuant to Article V herein.

**Section 8:** “Dwelling” shall mean any building located on a Lot and intended for use as housing for a single family.

**Section 9:** “Existing Property” shall mean and refer to that real property described in **Article II, Section 2** hereof.

**Section 10:** “Living Area” shall mean the heated area of a Dwelling calculated from its exterior dimension, excluding garages, boat sheds, terraces, decks, screened porches, open porches or “bonus rooms”, all as defined by the DRC at its sole discretion.

**Section 11:** “Lot” shall mean and refer to any plot of land shown upon the recorded subdivision plat of any subdivision within Existing Property together with the improvements hereon; if any.

**Section 12:** “Member” shall mean and refer to every person who is a member of the Club.

Section 13: “Owner” shall mean and refer to the record owner, whether it’s one or more persons or entities of fee simple title to any Lot, including contracts sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 14: “Plat” shall mean the plat of Buckhead North Subdivision, Shadow Moss Phase recorded in the Office of the Clerk of the Superior Court of Bryan County, Georgia, in Plat Book 528, Pages 3,4,5,6,7,8 and 9, or any plat of a subdivision within the Existing Property or Additional Property which is submitted to this Declaration.

Section 15: “Recreation Area” shall mean any area shown on the Plat as “Recreation Area.” These areas are intended for recreational use and enjoyment of the Owners and Members of the Club.

Section 16: “Recreation Facilities” shall mean any structure, building, pool, tennis court, ball field, green space, fixture or furnishing located within a Recreation Area.

Section 17: “Rules and Regulations” shall mean any document prepared by Declarant or Board of Directors of the Club, which will outline certain rules and regulations that will govern the use of any common area to include the community dock and use or operation of any carts.

Section 18: “Single Family” shall mean and refer to the one or more persons, each related to the other by blood, marriage or adoption, or a group of not more than three (3) persons not all so related; together with his or their domestic servants maintaining a common household.

Section 19: “Structure” shall mean anything erected, constructed or located in or upon the ground of any Lot, either temporarily or permanently.

Section 20: “Unauthorized Vehicles” shall mean any disabled vehicle, commercial vehicle, or any recreational vehicle.

Section 21: “Voting Members” shall mean and refer to the Declarant, as well as the Owners of the Lots.

Section 23. “Club Legal Documents” shall means this Declaration and all exhibits hereto, the Bylaws of Buckhead North Homeowners Association, Inc., the Articles of Incorporation for Buckhead North Homeowners Association, Inc., the Plats and the Rules and Regulations and architectural guidelines for the Club, all as may be supplemented or amended.

Section 24. “Violator” shall mean any Owner who violates the Club Legal Documents and any Owner’s family member, guest or occupant who violates such provisions; provided, however, if an Owner’s family member, guest or occupant violates the Association Legal Documents, the Owner of the relevant Lot also shall be considered a Violator. {Added by First Amendment}

## **ARTICLE II**

### **Property Subject To This Declaration And Additional Property**

**Section 1: Additional Property.** The real property which may be subjected to, this Declaration is located in Bryan County, Georgia, and is more particularly described on Exhibit "A", attached hereto and made a part hereof.

**Section 2: Existing Property.** The real property which is and shall be held, transferred, sold conveyed and occupied subject to this Declaration is located in Bryan County, Georgia, and is more particularly described on Exhibit "B", attached hereto and made a part hereof.

**Section 3. Additions to Existing Property with Club Approval.** The Club Board of Directors ("Club Board") shall have the sole discretion to: (a) determine whether or not to subject portions of the Additional Property to this Declaration; and/or (b) remove portions of the Existing Property from this Declaration.

(a) **Additions.** If an owner of a portion of the Additional Property desires to subject portions of the Additional Property to this Declaration, the Club Board may, in its discretion, choose to accept and approve such addition (on such terms as it determines) and shall file or record a Supplement to this Declaration ("Supplemental Buckhead North Declaration") which describes the portion of the Additional Property which shall become subject to this Declaration. Any such Supplemental Buckhead North Declaration may, in the sole discretion of the Club Board, contain additions or modifications of the covenants and restrictions contained in this Declaration to reflect the different character, if any, of the portions of the Additional Property made subject to this Declaration, provided any such addition or modification shall not exempt such Lot from any assessment. Upon the recording of record of a Supplemental Buckhead North Declaration, the portions of the Additional Property described therein shall thereafter be considered portions of the Existing Property hereunder.

(b) **Removals.** If an Owner of one or more Lots (which Lot or Lots are not contiguous to any other portion of the Existing Property ) desires to remove such Lot(s) from the terms of this Declaration, the Club Board may, in its discretion, choose to accept and approve such removal (on such terms as it determines) and record a Supplement to this Declaration ("Supplemental Buckhead North Declaration") which describes the portion of the Existing Property which shall be removed from being subject to this Declaration. Upon the recording of a Supplemental Buckhead North Declaration (including the recording of such other approvals as may be necessary), the portions of the Existing Property described therein shall thereafter no longer be considered portions of the Existing Property hereunder. {Added by Third Amendment}

**ARTICLE III**  
**Membership and Voting Rights**

**Section 1. Membership.** Every Owner of a Lot shall be a Member of the Club. Membership shall be appurtenant to and may not be separated from ownership of a Lot. No Owner, whether one or more persons, shall have more than one membership per Lot. Each Owner shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Club shall automatically cease. The provisions of this Section shall not affect or limit the voting rights of the Declarant as established by Section 3 below.

**Section 2. Voting Rights.** The Club shall have two (2) classes of voting membership:

- (a) **Class A.** Class A Members shall be all Owners, with the exception of the Declarant. Each Owner shall be entitled to one (1) vote for each Lot owned. If more than one person owns an interest in a lot, all such persons shall designate one (1) person who shall be the Voting member for the Lot and who shall be the only one (1) of such persons allowed to attend meetings of the Club and cast one (1) vote with respect to the Lot.
  
- (b) **Class B.** Class B Members shall be the Declarant and any assignee of Declarant who is designated as such in a recorded instrument executed by the Declarant. The Class B Member shall be a Voting Member of the Club and shall be entitled to cast the number of votes which are contained in the total of all Class A Members, plus one vote, until such time when the Class B membership terminates and is converted to Class A Membership. Class B membership shall terminate and be converted to Class A membership upon the happening of the later of the following:
  - i. When the Declarant shall have title to only one (1) lot; or
  - ii. Ten (10) years from the date of this Declaration is recorded; or

From and after the happening of these events which ever occurs later, the Class B Member shall be deemed to be a Class A Member. At such time, the Declarant shall call a meeting, as provided in the By-Laws of the Club for special meetings, to advise the membership of the termination of Class B Membership. Notwithstanding anything contained herein to the contrary, Declaration shall have the right, in its sole discretion, to terminate its Class B Membership at any time.

- (c) **Voting Members.** Only Voting members who are current on all assessments due the Club hereunder shall be entitled to attend meetings of the Club, and cast votes on any or all matters pertaining to the Club, including, but not limited to, the election of members of the Board of Directors, amending this Declaration, the Articles of Incorporation and By-Laws of the Club, and any or all other matters which may be brought before the Club membership, except as otherwise provided in this Declaration.

Section 3. Annual Meeting. The presence of the Class B Member at any Annual Meeting shall constitute a quorum of the voting members of the Association.

**ARTICLE IV**  
**Covenants for Assessments**

Section 1. Exemption. The Annual or Special Assessments provided for herein shall commence as to any Lot upon its conveyance by Declarant. It is the intention of this Section that Annual, Limited or Special Assessments shall not apply to any Lots owned by Declarant. Declarant shall have the right to waive assessments or the commencement of date of assessments. Provided, however, that the commencement date of assessment shall be not later than the day on which a certificate of occupancy is issued for a Dwelling constructed upon a Lot, and no assessments may be waived except, for a vacant Lot or a Lot upon which a Dwelling is being constructed.

Section 2. Creation of Lien and Personal Obligation of Assessments. Subject to the provision of Section 1 above, the undersigned for each Lot owned within the Existing Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree, for himself, his heirs, representative, successors and assigns, to pay the Club:

- (a) Annual Assessments; and
- (b) Special Assessments for Capital Improvements; and
- (c) Special Assessments for Marketing (the “Annual Assessments”, Special Assessments for Capital Improvements”, and “Special Assessments for Marketing” herein collectively called the “Assessments”).

All Assessments shall be fixed, established and collected as hereinafter provided and all Assessments, together with interest, costs and attorney’s fees, shall be a charge upon the Lot

against which such Assessment is made. Each such Assessment, together with interest, costs and attorney’s fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation of an Owner for delinquent Assessments shall not pass to his successors in title, unless expressly assumed by them.

Section 3. Annual Assessments or Charges. The Annual Assessments levied by the Club shall be used exclusively for promoting the health, safety and welfare of the residents of the Existing Property, and in particular for:

- (a) The maintenance and repair of any sign or signs located at the entrance or entrances to the residential areas of Buckhead North Subdivision. (“Entrances”)
- (b) The operation, maintenance of and payment of all utility bills for: (i) street lighting on all roads within the Existing Property (ii) lighting at the Entrances;
- (c) Landscaping (including, but not limited to grass cutting): (i) at the Entrances and (ii) on all roads, easements or Common Areas within the Existing Property;
- (d) The operation, repair and maintenance of an irrigation system at the Entrances or in any Common Areas and the payment of all utility bills for the operation of such irrigation systems;
- (e) The payment of all taxes of any nature due by the Club;
- (f) The payment of all management fees due for the management of the Club;
- (g) The payment of premiums for any general liability insurance, directors liability insurance, or other insurance obtained by the Club;
- (h) The payment of all operating expenses of the Club, including, but not limited to: postage expenses, office supplies, accounting fees, legal fees, office staff, office equipment and rent;
- (i) The maintenance and repair of any drainage or utility easements and Common Areas within the Existing Property;
- (j) The cost of maintaining the Recreation Area within the Existing Property including all cost associated with maintenance, insurance and operational expenses of all Recreational Facilities.

**Section 4. Amount of Annual Assessment.** The Annual Assessment for each Lot shall be payable annually, in advance, and the maximum amount thereof shall be determined as follows:

- (a) Until March 31, 2014, the Annual Assessment shall be Seven Hundred Forty-Seven Dollars (\$747.00) per lot.
- (b) The Annual Assessment for the fiscal year beginning April 1, 2014, and each year thereafter, shall be approved by a majority or the Owners voting at the annual meeting. If a quorum is not present at the annual meeting, the Board of Directors shall establish the Annual Assessment at the previous year’s rate.

- (c) The Board of Directors shall prepare or cause to be prepared, an annual budget showing the services provided by the Club and cost thereof. The Owners approve an annual budget at the annual meeting and the Board of Directors shall execute the approved budget.
- (d) While executing the approved annual budget, a Director of the Board may spend up to three hundred dollars (\$300.00) to make repairs and maintain HOA property without a vote of the board. A majority of the Board must approve expenditures of up to fourth thousand dollars (\$4,000.00). All non-emergency expenditures greater than \$4,000.00 not included in the annual budget must be approved by a majority of the Owners. {added by Fourth Amendment}

**Section 5. Special Assessments for Capital Improvements.** In additional to the Annual Assessments authorized above, the Club may levy a Special Assessment, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement situated within the Existing Property, including the necessary fixtures and personal property related thereto, provided that any such Assessment shall be approved by the affirmative vote of a majority of the Voting Members who are voting in person or by proxy at a meeting duly called for this purpose.

All Special Assessments may be collected on either an annual or monthly basis as determined by the Board of Directors.

**Section 6. Special Assessments for Marketing.** In addition to the Annual Assessments authorized above, there is established a Special Assessment, for the purpose of marketing the Subdivision for the benefit of the Owners after the termination of Declarant's Class B membership. Said Special Assessment for Marketing shall be set at \$300.00 until increased or decreased by the Board of Directors, and shall be payable upon the sale of any Lot (other than a Lot Conveyed by the Declarant) after January 1, 2005. Said special Assessments for Marketing shall be held in a separate account by the Club and shall be used only for advertising, marketing, and promoting the Subdivision. Any increase in the Special Assessment for Marketing which exceeds 15% of the previous Special Assessment for Marketing shall be approved by the affirmative vote of a majority of the Voting Members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 7. Notice and Quorum for Any Action Authorized Under Section 4 and 5.**

Written notice of any meeting of the Club called for the purpose of taking any action authorized under Sections 4, 5, or 6 shall be sent to all Voting Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence at the meeting of Voting Members including specifically the Class B member, or of proxies, entitled to cast fifty-one (51%) percent of all the votes of the Club shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, except as modified in the following sentence, and the required quorum at the subsequent meeting

shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the set for the preceding meeting.

Section 8. Uniform Rate of Assessments. All Assessments shall be fixed at a uniform rate for all Lots.

Section 9. Date of Commencement of Assessments: Due Dates: Certificate.

- (a) Unless otherwise provided herein, all Assessments provided for herein shall commence as to any Lot upon the conveyance of the Lot by Declarant or a date designated by the Declarant. The amount of Assessments due shall be computed according to the number of days remaining in the fiscal year applicable to such Assessment.
- (b) At least thirty (30) days in advance of the due date of each Assessment, the Board of Directors shall fix the amount and the due date of the Assessment and give each Owner subject thereto written notice thereof.
- (c) This Club, upon demand and payment of a service fee of not more than Twenty-five and no/100 Dollars (\$25.00) shall furnish a certificate in writing signed by an officer of the Club setting forth whether the Assessments due on a specified Lot have been paid. A properly executed certificate of the Club as to the status of Assessments of a Lot shall be binding upon the Club as of the date of issuance.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Club. Any Assessments not paid within thirty (30) days after its due date shall bear interest from the due date at the rate which is equal to the rate of interest chargeable by law in the State of Georgia on money judgments, or Fifteen (15%) percent of the total amount of Assessment and interest thereon per annum, whichever is lower, and such amount, together with interest and the costs of collection thereof as provided hereinafter, shall thereupon become a continuing lien upon the Lot against which such Assessment was made, and shall bind such Lot in the lands of the then Owner, his heirs, devisees, personal representatives and assigns. The Club may bring an action at law against the person personally obligated to pay the same, or foreclose the lien against the Lot in like manner as a deed to secure debt and, in either event, interest, costs, and attorney's fees in the amount of Fifteen percent (15%) shall be added to the amount of such Assessment. Upon exercise of its right to foreclose, the Club may elect to declare the entire remaining amount of all Assessments due and payable and collect the same as provided above. In the event of any such foreclosure, the Owner shall be required to pay reasonable rental for the Lot after commencement of the foreclosure action and the Club shall be entitled to the appointment of a receiver to collect the same. No Owner may waive or otherwise escape liability for the Assessments provided herein by abandonment of his Lot.

Section 11. Subordination of Lien to Deed to Secure Debt. This lien of the Assessments provided for herein shall be subordinate to the lien of any first deed to secure debt conveying the Lot subject to Assessments, and the lien of any ad valorem taxes on the Lot. Sale or transfer of a

Lot shall not affect the Assessments lien thereon. However, the sale or transfer of a Lot pursuant to a foreclosure, or any proceeding in lieu of foreclosure, shall extinguish the lien of such Assessments as to payments, which became due prior to such sale or transfer. No such sale or transfer shall release such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

**Section 12. Collection of Assessments Upon Conveyance by Declarant.** Notwithstanding anything contained herein to the contrary, the following Assessments shall be paid to the Club upon the conveyance of a Lot by Declarant or the date designated by Declarant:

- (a) The prorated balance of any Assessments due for the fiscal year in which the closing occurs or the date designated by Declarant as the date upon which Assessments shall commence; and,
- (b) If the conveyance occurs within 90 days of the end of any fiscal year, the Assessments due or projected due by the Declarant for the next fiscal year.

**Section 13. Borrowing Money.** The Board has no authority to borrow money without approval of a majority fifty-one percent (51%) vote of the Owners. Fifty-one percent (51%) of the Owners must vote in the affirmative for the association to be allowed to borrow money. {Added by Fourth Amendment}

## **ARTICLE V**

### **Architectural Control**

**Section 1. Purpose.** It is the Declarant's purpose to prohibit an improvement or change in the Existing Property which would be unsafe or hazardous to any personal property or individual; to minimize destruction or diminution of the view afforded to all Lots, and to preserve as much as is practicable of the visual continuity of the Existing Property; to assure that the improvements and construction of Dwellings and Structures on the Existing Property will be of good and attractive design, and in harmony with the natural setting of the area and to serve to preserve and enhance the beauty thereof, and to assure the materials and workmanship for all improvements are of high quality and comparable to other improvements permitted on the Existing Property.

**Section 2. Approval Required.** No building, wall, walkway, sign, sign post, driveway, fence, mailbox, screening device, swimming pool, pier or other structure shall be commenced, erected, altered, modified, or maintained upon an Lot, nor shall any exterior addition to or change or alteration therein be made, nor shall the clearing of any trees or change of property grade be made, until plans and specifications showing the same have been submitted to an approved in writing as to conformity and harmony of external design and general quality with the existing standards of the neighborhood and location in relation to surrounding structures and topography

by the Design Review Committee as outlined herein. No change shall be made in color, stain or painting of any structure or door thereof, balcony or deck thereunto attached, unless so approved.

**Section 3. Design Review Committee.**

- (a) The Design Review Committee (“DRC”), shall consist of at least three (3) and not more than five (5) members to be appointed by the Board of Directors and shall have exclusive jurisdiction to approve or disapprove all of the items listed in Section 2 above.

**Section 4. Liability.** Provided that a member or members of the DRC, as the case may be, has acted in good faith on the basis of such information as possessed, neither the DRC nor any member thereof shall be liable to the Club or to any Owner for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval or disapproval of any plans, drawings and specification, whether or not defective;
- (b) The construction or performance of any work whether or not pursuant to approved plans, drawings and specifications;
- (c) The development of any property within the Existing Property.
- (d) Any negligence or breach of contract by a builder carrying out construction within the Existing Property.

**Section 5. Responsibility of Declarant.** There is reserved unto the Declarant the right of performing all functions of the DRC and to give the approvals and disapprovals otherwise within the jurisdiction of the DRC, so long as the Class B Membership exists.

**Section 6. Procedures.** Whenever approval is required for any matter within the jurisdiction of the DRC, the person seeking such approval shall furnish the data required by the DRC, and no such submission shall be deemed to have been made unless and until all required information has been received by the DRC. The DRC shall either approve or disapprove the design, location and proposed construction and clearing activities within forty-five (45) days after plans and specifications have been submitted to it. If the plans and specifications are disapproved in any respect, the applicant shall be notified wherein such plans and specifications are deficient. The Board of Directors shall the right, from time to time, to establish filing fees to defray the expenses of the DRC, which fees shall be paid at the time of submission of such plans.

**Section 7. When Approval Deemed Granted.** In the event the DRC shall fail to approve or disapprove a proposed design plan and location within forty-five (45) days after all the required plans and specifications therefore have been received by it, approval shall be deemed granted, unless a suit to enjoin the proposed construction has been filed prior to commencement of construction. Plans and specifications required to be submitted shall not be deemed to have been

received if they are incomplete, contain erroneous data, or fail to present accurate and complete information upon which the DRC may be expected to base its decision.

**Section 8. Completion of Construction.** The approval granted by the DRC for construction activities upon a Lot shall be granted for a time period of one (1) year from the date of approval letter. In the event construction does not commence within one (1) year from the approval date, Owner must resubmit plans outlined in Section 6 above. Once construction has commenced for improvements approved by the DRC, all construction activities approved must be completed within one (1) year. No Dwelling shall be occupied until the Dwelling is fully complete. Any reconstruction or demolition of a Dwelling or portion of a Dwelling that is damaged by fire or weather-related activities or other acts that create damage must be secured by Owner and appropriate action as to not permit the appearance of such destruction to have a negative impact to surrounding properties. Partial reconstruction shall be completed within three (3) months and total reconstruction shall be completed within one (1) year of the date said damage occurred.

**Section 9. Responsibility of Contractor.** No contractor will commence any construction within the Existing Property unless contractor has obtained and read in full this Declaration and any amendments thereto.

**Section 10. Right To Inspect.** The DRC shall have the right, at its election, to enter upon any Lot before or during clearing or construction, erection or installation of improvements or alterations, to inspect the work being undertaken in order to determine specifications, and in a good and workmanlike manner utilizing approved plans and good quality materials, all to be determined in the sole opinion of the DRC. The DRC shall have the power to order the dismantling or cessation of work it deems nonconforming in its sole opinion, and to enforce such order by any legal or equitable proceedings, including but not limited to, a proceeding seeking a temporary order or other injunctive relief.

## **ARTICLE VI** **Use Restrictions**

**Section 1. Rules and Restrictions.** The Board shall enforce the rules and regulations concerning the Existing Property. The Board of Directors shall have the power to formulate, publish, and enforce interim rules, regulations, or guidelines concerning the HOA. Any rule, regulation, or guideline must be ratified by a majority of the owners at the earliest opportunity. If the Board wishes to revise the By-laws and/or covenants, the Board is to bring those proposed changes to a vote of the owners for owner approval or disapproval. {added by Fourth Amendment}

**Section 2. Lots Use.** Lots shall only be used for private residential purposes of a single family. No building shall be erected, re-erected or maintained on a Lot, except one Dwelling designed for occupancy by a single family, together with such accessory buildings for use by a single family as may be approved by the DRC in its sole discretion. Notwithstanding the foregoing, Declarant may use or permit to use of one or more Lots as model homes or a sales office.

**Section 3. Dwelling Size: Garages and Driveways.** No Dwelling shall be constructed upon any Lot within the Existing Property, unless:

- (a) The minimum Living Area of a one story Dwelling shall be not less than two thousand (2,000) square feet;
- (b) The minimum First Floor Living Area of a one and one-half story Dwelling shall be not less than one thousand eight hundred (1,800) square feet; and the total minimum Living Area of such one and one-half story Dwelling shall be not less than two thousand two hundred (2, 200) square feet;
- (c) The minimum Living Area of a two story Dwelling shall be not less than two thousand two hundred (2,200) square feet;
- (d) All Dwellings shall have a garage, which contains at least four hundred eighty (480) square feet and has either double garage door or two (2) garage doors. The garage must either be a part of the Dwellings or attached to the Dwelling by a roof;
- (e) All Dwellings must have an improved driveway as outlined in Section 12 and Section 19 of this article, along with an improved parking area for guest parking to accommodate a minimum of two cars.

**Section 4. Construction quality.** It is the intention and purpose of this Declaration to insure that all construction shall be of a quality of design, workmanship and materials, which is compatible and harmonious with the natural setting of the area and other Dwellings within the Existing Property. All Dwellings shall be constructed in accordance with applicable governmental codes, the Architectural Review Guidelines and with more restrictive standards as may be required by the DRC. All structures must have central heat and cooling units unless approved by the DRC and the Board of Directors of the Club.

**Section 5. Nuisances.** No noxious or offensive activity shall be carried on upon any Lot or anywhere within the Existing Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to other residents of the Existing Property. No immoral, improper, offensive or unlawful use shall be made of any portion of the Existing Property, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction shall be observed. In the event of a dispute as to whether an activity is noxious, offensive, annoying, a nuisance, immoral, improper or offensive as used herein, the determination as such by the Board of Directors shall be controlling.

**Section 6. Home Occupations.** No home occupation, industry, business, trade or profession of any kind shall be conducted, maintained or permitted on any Lot, unless approved, in writing, by the Board of Directors in its sole discretion. Notwithstanding anything contained to the contrary, Declarant, or its assigns, shall have the right to use any Lot or Dwelling within the Existing Property for a sales office or for model home purposes.

Section 7. Temporary Structures. No temporary structure, including, but not limited to: trailers, tents, shacks and mobile homes shall be placed on any Lot at any time; provided, however, that this prohibition shall not apply to Declarant, or its specifically designed assigns. No garage or garage apartment shall be erected prior to the construction of the main dwelling. In the event of a dispute as to whether a structure is a “Temporary Structure” as used herein, the determination as such by the Board of Directors shall be controlling.

Section 8. Livestock and Poultry. No animals, livestock or poultry of any kind shall be maintained on a Lot or in a Dwelling, except that no more than give (5) household pets may be kept or maintained on a Lot or in a Dwelling, provided that they are not kept, bred, or maintained for a commercial purpose and, provided further, that they shall not, in the sole discretion of the Board of Directors, constitute a nuisance or cause unsanitary conditions. All animals must be confined to their Owner’s Lot or Dwelling, unless walked on a leash. Dogs which bark for extended periods of time so as to cause a nuisance or disturbance to neighbors shall not be permitted. At no time are pets permitted to be tied up outside. Owners are responsible for cleaning up pet’s defecation from the home site daily and while walking the pet. All pets, including dogs, shall be housed within the Living Area of the Dwelling at night. No pets shall be attached to any structure or tree by a leash, rope of chain.

Section 9. Resubdivision. No Lot shall be resubdivided, combined with another Lot, or reduced in size without the written consent of the DRC; provided, however that this prohibition shall not apply to Declarant or its specifically designated assigns.

Section 10. Outside Antennae. No outside radio or television antennae, dishes, or discs shall be erected on a Lot without the prior written approval of the DRC.

Section 11. Clothes Lines. No clotheslines or other devices designed for drying clothes outside of a Dwelling shall be permitted within the Existing Property. In the event of a dispute as to whether a device is a “Clothes Line” as used herein, the determination as such by the DRC shall be controlling.

Section 12. Parking.

- (a) Automobiles, trucks and motorcycles must be parked in garages, on the driveway area on the two car parking pads required on each Lot;
- (b) No disabled automobiles, trucks, motorcycles, (collectively “Disabled Vehicles”) or any commercial vehicles, buses, (collectively “Commercial Vehicles”) or any trailers, camping trailers, motor homes, recreational vehicles or boats (collectively “Recreational Vehicles/Boats”), said Disabled Vehicles, Commercial Vehicles and Recreational Vehicles/Boats being hereinafter collectively referred to, as “Unauthorized Vehicles/Boats” may be parked within the portions of the Existing Property, unless the Owner thereof obtains a conditional parking permit form the Board of Directors. The Board of Directors shall have the authority, in its discretion, to establish the standards for the issuance of such permit and has the authority to order the removal of any Unauthorized Vehicle/Boat maintained or parked in violation of its conditional parking permit. The cost of such removal shall be paid by Owner of the removed permit. The cost of such removal shall be paid by the Owner

of the removed Unauthorized Vehicle/Boat. In the event of a dispute as to whether a device is an Unauthorized Vehicle/Boat as used herein, the determination as such by the Board of Directors shall be controlling.

- (c) No automobiles, trucks, motorcycles or boats shall be parked in street, right-of-ways or Common Areas within the Existing Property.

Section 13. Plants and Trees. No trees or shrubbery on a Lot may be cut, trimmed or disturbed until a Lot Disturbance Permit has been issued by the DRC. The DRC shall have the authority to establish the standards for the issuance of such Permit and can reject plans for construction of a Dwelling on a Lot if the trees or shrubbery previously existing on the Lot had been disturbed prior to the issuance of a Lot Disturbance Permit or in violation of the conditions of such.

Section 14. Signs. Shall be displayed in accordance with ARC guidelines.

Section 15. Drainage Ditches. No change shall be made in the level or courses of any drainage ditch or swale in the Existing Property without the prior written approval of the DRC. The Owner of a Lot which adjoins a drainage ditch or swale shall maintain that portion of such drainage ditch or swale lying within or contiguous to his Lot in a clean and orderly condition, and shall maintain the proper depth and grade of such drainage ditch or swale.

Section 16. Setback. All Structures erected on a Lot must be situated within the front, rear and side setback lines shown on the Plat. Notwithstanding the location of setback lines as shown on the Plat, no Structure can be located within twenty (20) feet of the side of boundary lines.

The DRC shall have the right to approve all site plans prior to the layout of any structure and to approve the location the structure shall be placed on the lot. The plan must clearly show all building setbacks lines to include front, rear and sides. No structure shall be laid out on any lot without the written permission of the DRC approving such layout plan.

Section 17. Maintenance.

- (a) Each owner shall be responsible for the maintenance of his Lot, yard and all improvements erected hereon. If, in the sole opinion of the Board of Directors, an Owner fails to maintain his Lot, yard or any improvements erected hereon in a neat and orderly manner, the Club may provide such maintenance as it deems necessary, and the costs thereof shall be added to and become a part of the Annual Assessment to which such Lot is subject.
- (b) Each vacant Lot must be "bushogged" at least twice per calendar year in a manner acceptable to DRC, in its sole opinion. If in the sole opinion of the Board of Directors, an Owner fails to properly "Bushog" his Lot, the Club may provide such "Bushogging" as it deems necessary and the costs thereof shall be added to and become a part of the Annual Assessments to which such Lot is subject. In the event of a dispute as to the definition of "bushog" as used herein, the determination as such by the Board of Directors shall be controlling.

**Section 18. Fuel Tanks.** No fuel tank or similar storage receptacle may be exposed to view of a Lot. Fuel tanks or similar storage receptacles and may be installed only within a Structure, within a screened area or buried underground, as approved by the DRC in its discretion. This provision shall not apply during construction of a Dwelling on a Lot.

**Section 19. Driveways and Walkways.**

- (a) No driveways or walkways can be located within five (5) feet of the side boundary lines of a Lot. Notwithstanding the foregoing, driveways and walkways can only be constructed on Lots at locations approved by the DRC, in its sole discretion;
- (b) Driveways and walkways can only be constructed of such materials as approved by the DRC, in its sole discretion;

**Section 20. Golf Carts, All Terrain Vehicles, Scooters, Mopeds, Go Carts and Other Gasoline or Electric Powered Means of Transportation (collective "Carts").** Carts shall be operated in accordance with all applicable laws or ordinances established and enforced by Bryan County and the State of Georgia.

**Section 21. Firearms, Archery, Hunting.**

- (a) No firearms, including but not limited to: rifles, shotguns, pistols, pellet guns or BB guns shall be discharged within the Existing Property.
- (b) No archery equipment shall be shot or used within the Existing Property;
- (c) Hunting or shooting birds, squirrels or other animals is not permitted within the Existing Property.

**Section 22. Mailboxes.** No mailboxes or receptacles for the delivery of newspapers or mail shall be allowed on a Lot or on the right of way adjacent to a lot unless the mailbox or receptacle has either been purchased from the Declarant or is an exact replica of a mailbox or receptacle designed by Declarant.

**Section 23. Septic Tank and Drain Fields.** No Septic Tank or Drain Field shall be placed on any lot except as provided in Article XI hereof.

**Section 24. Underground Utilities.** All utility lines including those used by electric, telephone, cable television or any other company providing utilities or transmission lines shall not be allowed to serve any dwelling unless lines, wires or cables are placed underground and in accordance with any applicable laws relating to underground utilities.

Section 25. Screening. All Dwellings constructed shall provide a screened area for the purpose of storing any garbage container and a constructed visual screen for all outside air compressors or other mechanical devices associated with the dwelling as approved by the DRC.

## **ARTICLES VII**

### **Easements**

Section 1. Reservation of Easement. In addition to all easements shown on the Plat, Declarant reserves to itself, and its designated successors and assigns, a perpetual, alienable and releasable easement across and within ten (10') feet of all the boundaries of a Lot for the installation, construction, renewing, operation and maintenance of utilities drainage and drainage facilities, including installation under the ground, as well as upon and above ground, for the purpose of service the Existing Property with water, telephone, electricity, sewer, cable television, and other utility services. Within these easements, no Structures, planting or other materials may be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may, in the sole discretion of the DRC, change the direction of flow of drainage ditches and easements, or which may obstruct or retard the flow of water through drainage ditches, swales and easements.

## **ARTICLE VIII**

### **Indemnification**

Notwithstanding any duties of the Club to maintain any Private Roads, rights-of-ways, street lighting, Recreational Facilities or any other duties imposed upon or accepted by the Club, the Club shall not be liable for injury or damage caused by any latent or other condition in any portion of such rights-of-ways, street lighting, Recreational Facility or otherwise, nor for injury caused by the elements, Owners or other persons, nor shall any officer or director of the Club or such officer or director in the performance of his duties, unless the same shall be due to the willful misfeasance or malfeasance of such officer or director. Each officer and director of the Club shall be indemnified by the Club against all expenses and liabilities, including attorney's fees incurred, in connection with any proceedings to which he or she may be a party or in which he may become involved by reasons of his having been an officer or director of the Club, or any settlement, whether or not such person is an officer or director of the Club at the time such expense and liabilities are incurred, except in such cases where the officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In the event of any such settlement, indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Club.

**ARTICLE IX**  
**General Provisions**

**Section 1. Application.** All Owners, employees of Owners, guests of Owners, tenants or other persons who may, in any manner, use the Existing Property or any portion thereof, shall be subject to the provisions hereof, and to the provisions of the Articles of Incorporation and the By-Laws of the Club and any Rules and Regulations formulated by the Board of Directors pursuant Article VI herein.

**Section 2. Enforcement.**

**A. Compliance with the Club's Legal Documents.**

All Owners, Occupants, and their guests shall comply with the Club's Legal Documents. The Club, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Club's Legal Documents directly against any Violators. However, in an Owner's family member, guest or occupant violates the Club's Legal Documents, the Club, in its sole discretion, is permitted to enforce the terms of the Club's Legal Documents against (1) Only the Owner; (2) only the violating family member; or (3) both the Owner and the violating family member, guest or occupant. Notwithstanding anything herein to the contrary, the Owner of the Lot is always ultimately responsible for his or her own actions and the action of all family members, occupants and guests of such Lot.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or occupant to proceed independently for relief from interference with his or her personal or property rights against a person violating the Club's Legal Documents. The Board of Directors may, in its discretion, require the aggrieved Owner or occupant to independently pursue all available remedies under Georgia law against the Violator before the Club intervenes and commences enforcement action against such Violator.

**B. Types of Enforcement Actions**

In the event of a violation of the Club's Legal Documents, the Club shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Club or the Board to deny ingress and egress to or from a Lot:

- (1) Suspend all Violator's rights to use the Common Area and Recreation Facilities;
- (2) Suspend the voting rights of a violating Owner;
- (3) Impose reasonable fines against all Violators; which shall constitute a lien on the violating Owner's Lot;
- (4) Use of self-help to remedy the violation;

- (5) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the Violator to cease and/or correct the violation; and
- (6) Record in Bryan County land records a notice of violation identifying any uncured violation of the Club's Legal Documents regarding the Lot.

**C. Suspension and Fining Procedure.**

Except as provided below, before imposing fines or suspending right to use the Common Area and/or Recreation Facilities or the right to vote, the Club shall give a written violation notice to the Violator as provided below.

**(1) Violation Notice**

The written violation notice to the Violator shall:

- (a) Identify the violation, suspension(s) and/or fine(s) being imposed; and
- (b) Advise the Violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration suspension(s) or the fine(s).

Notwithstanding the Violator's right to request a violation hearing suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

**(2) Violation Hearing**

If the Violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a Violator fails to timely request a violation hearing, such Violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a Violator timely requests a violation hearing, the Violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

**(3) No Violation Notice and Hearing Required**

No violation notice or violation hearing shall be required to:

(a) Impose late charges on delinquent assessments;

(b) Suspend a violating Owner's voting rights if the Violator's Lot is shown on the Club's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists of the Board of Directors otherwise reinstates such rights in writing;

(c) Suspend a Violator's right to use the Common Area and/or Recreation Facilities if the Violator's Lot is shown on the Club's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violator's right to use the Common Area and Recreation Facilities shall be automatic (which shall allow the Club to tow and/or boot a Violator's vehicle located on the Common Area or at the Recreation Facilities without complying with the Suspension and Finding Procedures described above);

(d) Engage in self-help in an emergency;

(e) Impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the Violator; or

(f) Impose fines if the same violation occurs against on the same Lot, in which case fine(s) may be imposed on a per diem basis without any further notice to the Violator.

**(D) Self-Help**

In addition to all other enforcement rights granted herein, the Board of Directors may elect to enforce any provision of the Club's Legal Documents by self-help without the necessity for compliance with the Suspension and Fining Procedures described above.

By the way of example and not limitation, the Club or its duly authorized agent shall have the authority to tow vehicles that are in violation of parking regulations and enter a Lot or any portion of the Common Area or Recreation Facilities to abate or remove any structure, thing or condition that violates the Club's Legal Documents. Unless an Emergency exists, before exercising self-help, the Club shall give the Violator at least two days prior written notice. Such notice shall request that the Violator remove and abate the violation and restore the Lot to substantially the same condition that existed prior to the structure, thing or condition being placed on the Lot and causing the violation. Such removal, abatement and restoration shall be accomplished at the Violator's sole cost and expense. If the same violation occurs again on the same Lot, the Club may exercise self-help without any further notice to the Violator.

**E. Injunctions and Other Suits at Law or in Equity**

All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Club's Legal Documents. Therefore, in addition to all other enforcement rights granted herein, the Club is hereby entitled to bring an action for permanent injunction, temporary

injunction and/or specific performance to compel a Violator to cease and desist or correct any violation.

**F. Costs and Attorney's Fees for Enforcement Actions**

In an action taken by the Club to enforce the Club's Legal Documents, the Club shall be entitled to recover from the Violator, any and all costs incurred by the Club, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Lot.

**G. Failure to Enforce**

The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each Violator. The failure of the Board to enforce any provision of the Club's Legal Documents shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Club for failure to enforce if the Board of Directors determines that:

- (1) the Club's position is not strong enough to justify taking enforcement action;
  - (2) a particular violation is not of such material nature as to be objectionable to a reasonable person;
  - (3) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;
  - (4) the aggrieved Owner or occupant asserting a failure of enforcement has not independently pursued all available individual remedies under Georgia law; or
  - (5) the Club enforces only against an Owner for the violation of the Owner's family member, guest or occupant or the Club does not enforce against the Owner and enforces only against the violating family member, guest or occupant.
- {added by First Amendment}

**Section 3. Severability.** Invalidation of any Section or portion of this Declaration by judgment or court order shall in no way affect any other Sections or portions, which shall remain in full force and effect.

**Section 4. Notices.** Any notices sent or required to be sent to any party under the provisions of this Declaration shall be deemed to have been properly given when mailed, postage prepaid, to the last known address shown on the books of the Club for such addressee at the time of mailing or when delivered by hand.

**Section 5. Duration.** The covenants and restrictions of this Declaration shall run with the Existing Property, bind the Existing Property and shall inure to the benefit of and be enforceable

by the Club, an assignee of the Club, the Declarant, the Board of Directors, the DRC, the Landowner or any Owner and their respective legal representatives, heirs, successors and assigns, for a period of twenty (20) years from the date this Declaration is recorded. The Covenants and Restrictions of this Declaration may be continued beyond said twenty (20) years for successive periods of the ten (10) years each as follows: to continue the Covenants and Restriction of this Declaration at least two-thirds of the record Owners of Lots shall execute a document containing a legal description of the entire area affected by the covenants and restriction of this Declaration, a list of the names of all record Owners of lots affected thereby, and a description of the covenants and restriction to be continued (which may be incorporated by a reference to another recorded document). Such document, together with the affidavit of an attorney licensed to practice in this State, stating that he has searched the land records and has verified the names of the record owners appearing in the document shall be recorded in the Office of the Clerk of Superior Court of Bryan County, Georgia, prior to the expiration of the initial twenty (20) year period, or any subsequent ten (10) year extension, provided, however, that no such extension shall be effective unless made and recorded prior to the laps of time of such initial period or extension.

**Section 6. Amendment and Declaration.**

- (a) Until termination of its Class B Membership in the Club, Declarant shall have the sole right, in its discretion, to amend this Declaration.
- (b) Upon termination of Declarant's Class B Membership in the Club, the Club shall have the authority to amend this Declaration by the affirmative vote of a majority of Voting Members who are voting in person or by proxy at a meeting duly called for this purpose. Notwithstanding anything contained herein to the contrary, the Club shall not have the right to amend this Declaration if such amendment affects the Management Agreement described in Article XIII below, unless Declarant consents to such amendment.

**Section 7. Lease of Dwelling.** No Dwelling shall be leased for transient or hotel purposed, nor may any Owner lease less than his entire Dwelling. All leases must be in writing and provided that the terms of the lease and the occupancy of the Dwelling are subject in all respects to this Declaration and to the By-Laws and Articles of Incorporation of the Club, and any Rules and Regulations formulated by the Board of Directors pursuant to Article VI herein, and that any failure by any lessee to comply with the terms of such documents shall constitute a default under such lease.

**Section 8. Liability Insurance.** At the sole discretion of the Board of Directors, the Club may obtain and maintain a broad form public liability insurance policy or other form of liability insurance policy covering damage or injury caused by the negligence of the Club or any of its agents, officers or employees, in amounts to be determined by the Board of Directors for each occurrence. Such policy or policies may, in the discretion of the Board of Directors, contain a waiver of the right of subrogation against the Club, its Members, Officers, Agents or Employees.

**Section 9. Litigation.** No judicial or administrative proceedings shall be commenced or prosecuted by the Club unless approved by the affirmative vote of seventy-five (75%) percent of the Voting Members who are voting in person or by proxy at a meeting duly called for this purpose. However, this section shall not apply to:

- (a) Any actions brought by the Club, the DRC, the Landowner or any assignee of the Club to enforce any provisions of this Declaration (including, without limitation, the foreclosure or liens or the enforcement of use restrictions);
- (b) Imposition and collection of Assessments as provided hereinabove;
- (c) Counterclaims by the Club in proceedings instituted against it.

**Section 10. Conflicts.** In the event of any irreconcilable conflict between this Declaration and the By-Laws or the Articles of Incorporation, the provisions of this Declaration shall control.

**Section 11. Gender and Number.** All pronouns used herein shall be deemed to include the masculine, the feminine and non-personal entities, as well as the singular and plural whenever the context provides or permits.

**Section 12. Common Areas and Recreational Parks.** The Declarant, his successors or assignees, shall have the right, but not the obligation, in their sole discretion, to convey to the Club any property within the Existing Property to be held and used by the Club as Common Area or Recreational Parks for the use and benefit of all Owners (herein "Common Areas"). The designation of areas as "Common Areas" or "Wetlands" on any plat or maps of the Existing Property shall not create any obligation of Declarant to convey such "Common Areas" or "Wetlands" to the Club and Declarant specifically reserve the right to decline to convey such areas to the Club.

**Section 13. Other Insurance.** In addition to the liability insurance described in Section 8 above, the Board of Directors, in its sole discretion, may obtain and maintain for the Club such other insurance or fidelity bonds, as it deems necessary.

## **ARTICLE X** **Water Service**

**Section 1. Fees and Usage.**

- (a) Every Owner of a Lot within the Existing Property shall be presumed conclusively by his acceptance of a deed of conveyance to such Lot to have covenanted for himself, his heirs, representatives, and successors and assigns to pay the following in connection with the private utility company ("Utility Company") furnishing water service within the Existing Property.

- (i) A Connection/tap-in fee of One Thousand and No/100 (\$1,000.00) dollars per Lot, payable at the time of conveyance of the Lot by the Declarant to its initial Owner; and
  - (ii) After connection to the water system, water usage shall be determined by water meters installed for each Lot and the fee for water usage shall be determined in accordance with a Trust Indenture entered into between Declarant and the Atlantic Water Supply Company, Inc., as Trustee, and recorded in the Office of the Clerk of Superior Court of Bryan County, Georgia, in Deed Book 11-R, Page 333.
- (b) Except for a well or wells owned by the Utility Company, no other wells designed to provide drinking water shall be permitted on any Lot on the Existing Property.

**Section 2. Utility Charges.** Unpaid connection/tap-in fees and usage charges (collectively “Fees”) shall constitute a lien upon and encumber the Lot with respect to which the charges have been made, and the Utility Company and its successors and assigns, shall have the same rights and remedies to record and foreclose such lien and collect such other charges, such as interest, attorney’s fees and costs as are reserved to the Club with regard to Assessments as set forth in Article IV herein. Notwithstanding anything contained herein to the contrary, the Utility Company and, its successors and assigns shall have the right to terminate or refuse water service to any Lot Owner who fails to pay any of the Fees as the same shall become due.

## **ARTICLE XI**

### **Fences**

**Section 1. General.** The construction, reconstruction and alteration of all Fences situated within the Existing Property must be approved by the DRC as required under Article V above prior to construction, reconstruction or alteration as the case may be.

**Section 2. Dimensions, Location and Materials.**

- (a) No fence can exceed five (5) feet in height;
- (b) No fence can be constructed or placed in a front yard on any Lot;
- (c) All galvanized steel fences must be factory coated with a black plastic material acceptable to the DRC, in its sole discretion.
- (d) All fences to be erected in the side or rear of any Lot must be approved by the DRC as to placement of said fence. A plat or scaled down drawing showing the boundary lines and placement of the fence must be submitted to the DRC for approval per the requirements in Article V, Section 2 of the Declaration. {Added by Second Amendment}

Section 3. Swimming Pool Fences. The DRC shall have the right, in its sole discretion, to waive, modify or amend the above restrictions in regards to fences surrounding swimming pools.

Section 4. Approval. Notwithstanding any of the provisions outlined in this article, the Declarant shall have the right to approve any fence at its discretion.

## ARTICLE XII

### Construction Waste Materials

Section 1. General. During construction of a Dwelling, the following provisions shall apply to scrap materials, wood, paper, trash or other construction waste materials (Collectively "Construction Waste Materials"):

- (a) If there is sufficient area on a Lot upon which the Dwelling is being constructed for a truck to pass to the rear of such Lot, then all Construction Waste Materials related to the construction of said Dwelling must be stored and situated at the rear of said Lot;
- (b) The only Construction Waste Materials, which can be burned within the Existing Property, are wood and paper. These can only be burned in a fifty-five (55) gallon drum provided the contractor or owner has complied with all local and state laws in obtaining proper permission or permits to burn.
- (c) After a Dwelling is "dried in", as defined by Declarant, all Construction Waste Materials must be removed from the Lot and the Lot "rough graded" as defined by and to the satisfaction of the Declarant.
- (d) If, in its sole discretion, the DRC determines that a Lot Owner or builder construction a dwelling for a lot Owner, does not comply with any of the provisions of the Article, the Declarant shall have the option, in its sole discretion, to take whatever actions its deems appropriate to correct said noncompliance and the cost of which corrections plus fifty (50%) percent of said costs shall be paid to Declarant by the Owner of the Lot on which the noncompliance occurs. The amounts due Declarant pursuant to this Article shall constitute a lien upon and encumber the Lot with respect to which the corrections have been made, and the Declarant, and its successors and assign, shall have the same rights and remedies to record and foreclose such a lien and collect such amount as reserved to the Club with regard to Assessments as set forth in Article IV herein.

### **ARTICLE XIII**

#### **Assignment of Club's Rights and Duties**

**Section 1.** **General.** The Club may, from time to time, delegate by contract any or all of its rights, powers, discretion and duties described in this Declaration to such agents or managers as it may nominate. In addition, the Club may permanently or temporarily assign and transfer by contract any or all of its powers and duties (specifically including, but not limited to, discretionary powers and duties), rights and obligations reserved to it by this Declaration to any one or more persons, associations, partnerships, corporations or other entities which will accept the same, including Declarant or a partnership or association in which Declarant owns an interest.

### **ARTICLE XIV**

#### **Constructive Notice**

**Section 1.** **General.** Every person, firm, association, partnership, corporation or other entity who hereafter owns or acquires any right, title, estate or interest in or to any portion of the Existing Property, is and will be conclusively deemed to have consented to and agreed to every covenant, condition and restriction contained in this Declaration, where or not any reference to this Declaration is contained in the instrument by which such person, firm, association, partnership, corporation or other entity acquired an interest in such portion of the Existing Property.

IN WITNESS WHEREOF, the foregoing instrument has been executed under seal, by Declarant, on this 1<sup>st</sup> day of August, 2003.

**EXHIBIT "A"**

**Any property now owned or later acquired by Declarant in Bryan County, Georgia, and lying within a one mile radius of the property described on Exhibit "B" hereto.**

## EXHIBIT "B"

All that certain tract or parcel of land situated, lying and being in Bryan County, Georgia, and being shown as "Phase 1, Buckhead North Subdivision, Shadow Moss Phase" on that certain Plat entitled "Plat of Phase 1, Buckhead North Subdivision, Shadow Moss Phase, 20<sup>th</sup> G.M.D., Bryan County, Georgia" recorded in the Office of the Clerk of Superior Court of Bryan County, Georgia, at Plat Book 528, Pages 4,5,6,7,8 and 9. Said Plat is incorporated herein for all purposes.