

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WOODCLIFF**

GEORGIA, FULTON COUNTY  
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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
WOODCLIFF**

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**EXHIBITS**

A           Description of Property

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
WOODCLIFF**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** is made this 28<sup>th</sup> day of JANUARY, 1998, by WOODCLIFF DEVELOPMENT, L.L.C., a Georgia limited liability company (hereinafter referred to as "Declarant").

**W I T N E S S E T H:**

**WHEREAS**, Declarant is the owner of certain real property located in Land Lot 126 of the 17th District of Fulton County, Georgia, which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration; and

**WHEREAS**, Declarant has developed on the real property described above a development known as Woodcliff, consisting of thirty-nine (39) single-family residential building lots (hereinafter referred to as the "Development"); and

**WHEREAS**, Declarant will cause the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined); and

**WHEREAS**, Declarant desires to subject the Development to this set of protective covenants for the purpose of providing restrictive covenants regarding the use of the property, for the maintenance of certain property and easements which shall be conveyed to the Association for the benefit of owners of property within the Development, and for the establishment of the Association to enforce the covenants and operate and maintain any property designated for the use and benefit of owners within the Development;

**NOW, THEREFORE**, Declarant hereby declares that all of the property described in Exhibit "A" shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with title to the real property subject to this Declaration. This Declaration shall be binding on all parties having any right, title or interest in the real property now or hereafter subjected hereto, or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and the Association (as herein defined).

**ARTICLE I**

**DEFINITIONS**

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

**1.01 Architectural Control Committee.** "Architectural Control Committee" or "ACC" shall mean and refer to the Architectural Control Committee established in Article V of this Declaration.

**1.02 Articles of Incorporation.** "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation for the Association, as filed with the Secretary of State of the State of Georgia, as the same may be amended from time to time.

**1.03 Association.** "Association" shall mean and refer to Woodcliff Homeowners Association, Inc. (a non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

**1.04 Board of Directors.** "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

**1.05 Builder.** "Builder" shall mean and refer to any Person which purchases one or more Lots for the purpose of constructing improvements thereon for later sale to consumers, or parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business.

**1.06 Bylaws.** "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

**1.07 Common Expenses.** "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

**1.08 Common Property.** "Common Property" shall mean and refer to all real property, including any portion of a Lot, (together with any and all improvements now or hereafter located thereon) and all personal property, now or hereafter owned by the



Association, for the common use and enjoyment of the Owners, including easements held by the Association for such purpose.

**1.09**            Community-Wide Standard. "Community-Wide Standard" shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard may be more specifically defined by the Board of Directors.

**1.10**            Consumer Price Index. "Consumer Price Index" or "CPI-U" shall mean and refer to the Consumer Price Index-Seasonally Adjusted U.S. City Average for All Urban Consumers (1982-84=100) published in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor. In the event the Consumer Price Index ceases to use the 1982-84 average of 100 as the basis of calculation, or if a substantial change is made in the term or number of items contained in the Consumer Price Index, then the Consumer Price Index shall be adjusted to the figure that would have been arrived at had the change in the manner of computing the Consumer Price Index in effect at the date of this Declaration not been altered. In the event that the Consumer Price Index (or a successor or substitute index) is not available, a reliable government or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used.

**1.11**            Declarant. "Declarant" shall mean and refer to Woodcliff Development, L.L.C., a Georgia limited liability company, its successors and assigns. The term shall also be applied to any Person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which lawfully acquires the rights, privileges and options of Declarant in accordance with this Section. Should any of the Property become subject to a first Mortgage given by Declarant as security for the repayment of a development loan, then all rights, privileges and options herein reserved to the Declarant, if held by the Mortgagor under said development loan, shall inure to the benefit of the holder of such first Mortgage upon its becoming the actual owner of the Property then subject to such first Mortgage through judicial foreclosure or sale made pursuant to any power of sale contained in such first Mortgage or by conveyance of a deed in lieu of foreclosure. The Declarant as hereinabove defined, may transfer all of its rights, privileges and options as Declarant to a successor-in-title to all or some portion of the Property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of the Property, and provided further, that in a written instrument, such successor-in-title is expressly assigned Declarant's rights, privileges and options herein reserved to Declarant. Such an assignment may be

included as a recital in any deed executed by Declarant which conveys any portion of the Property.

**1.12**        **Declaration.** "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Woodcliff, as the same may be amended from time to time.

**1.13**        **Development.** "Development" shall mean and refer to the Property, the Common Property, and all improvements located or constructed thereon.

**1.14**        **Lot.** "Lot" shall mean and refer to any numbered parcel of land shown as a residential building lot upon that certain plat of survey entitled "Final Subdivision Plat for Woodcliff", prepared by Roachester & Associates, Inc., dated October 21, 1997, the same to be recorded in the real estate records of Fulton County, Georgia, or as similarly shown on any revised or supplemental surveys of the Property; provided, however, that no portion of the Common Property shall be a Lot except as may be provided for in Article II.

**1.15**        **Member.** "Member" shall mean and refer to a Person entitled to membership in the Association.

**1.16**        **Mortgage.** "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

**1.17**        **Mortgagee.** "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

**1.18**        **Mortgagor.** "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

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

**1.20**        **Person.** "Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or any other legal entity.

**1.21**        **Property.** "Property" shall mean and refer to that certain real property described in Exhibit "A" attached hereto.

**1.22**        **Restrictions.** "Restrictions" shall mean and refer to all covenants, conditions, restrictions, easements, liens and other obligations created or imposed by this Declaration.

**1.23**        **Structure.** "Structure" shall mean and refer to:

(a) any thing or object, including, but not limited to, paint, stains and other such coverings, 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, shed, greenhouse or bathhouse, coop or cage, pethouse, covered or uncovered patio, swimming pool, antennas and satellite dishes, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.23 applies to such change.

## **ARTICLE II**

### **PLAN OF DEVELOPMENT AND COMMON PROPERTY**

**2.01**        **Rights of the Declarant.** Declarant hereby reserves the right, but not the obligation, to be exercised in its sole discretion, to designate the boundaries of all Lots and Common Property in the Property as they are developed and platted and to construct improvements thereon. Declarant shall have the right, but not the obligation, to make improvements and changes to all Common Property and to all Lots owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Property, (ii) changes in the location of the boundaries of any Lot owned by the Declarant or of the Common Property, (iii) installation and maintenance of any storm drainage system and water, sewer and other utility systems and facilities; and (iv) installation of security and/or refuse facilities. In accordance with the preceding, Declarant reserves the right to record, modify, amend, revise and add to, at any time and from time to time, plats of survey for the Development, setting

forth such information as Declarant may deem necessary with regard to the Development, including without limitation, the locations and dimensions of the Lots, Common Property, roads, utility easements and systems, drainage easements and systems, right-of-way easements, and setback line restrictions.

**2.02            Conveyance of Common Property.**

(a) The Declarant may from time to time cause to be conveyed to the Association certain real property (which may include Lots or portions thereof) or grants of easements as well as personal property, for the common use and enjoyment of the Owners (such real and personal property being hereinafter collectively referred to as "Common Property"). In addition, the Declarant may from time to time cause the conveyance of certain real property or grants of easements to the general public as may be required by governing authorities in accordance with this Declaration.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.02 at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 2.02, the Declarant may convey, or cause to be conveyed, to the Association in accordance with this Section 2.02 such other real and personal property as the Declarant, in Declarant's sole discretion, may determine to be necessary or proper for ownership by the Association.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property, Open Space, or Recreation Area (or which is designated by any words which similarly signify such property is for the use of the Owners in the Development) whether by recorded plat of survey or otherwise, or designated for public use, shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority. Declarant shall likewise be under no obligation to improve or convey any property for the use and benefit of the Owners.

(e) The Association hereby covenants and agrees to accept all such conveyances of Common Property. With respect to any improved Common Property, issuance of a certificate of occupancy (if required) by the local governing authority having jurisdiction over such matters, shall be conclusive evidence that said property complies with all building and construction standards. The Declarant, or any predecessor Declarant, shall not be responsible for compliance with any requirements called for by said local governing authority after the issuance of a certificate of occupancy.

**2.03 Right of Enjoyment.** Every Owner shall have a nonexclusive right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. Notwithstanding the foregoing, in the event the Common Property includes amenities, such as a clubhouse, pool or tennis courts, no Owner shall have the right to use the amenities unless and until the Owner is paying the full regular annual assessment and maintenance fee being paid by Owners of Lots which have been occupied as a residence; provided, however, for so long as the Declarant own at least one (1) Lot for sale, this restriction shall not apply to the Declarant, which may delegate its right to use and enjoy the amenities to its employees, and to its guests and social invitees. No Builder shall be allowed to use the amenities; provided, however, if a Builder is paying the full regular annual assessment and maintenance fee for a Lot, any natural persons occupying the Lot shall, subject to such reasonable rules and regulations as may be adopted by the Association applicable to the Owners, have the right and easement to use and enjoy the amenities. The Association may permit Persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.03 is subject to those items set forth in Section 2.04, which include suspension by the Association as provided in Sections 2.04(c) and 3.05.

**2.04 Rights of The Association.** The rights and privileges conferred in Section 2.03 hereof shall be subject to the right of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property (which shall specifically include the right of the Association, acting through its Board of Directors, to allow residents of other

developments outside of Spalding Heights to use the Common Property);

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

(c) suspend the voting rights of any Member, pursuant to Section 3.05, and the right of enjoyment granted or permitted by Section 2.03;

(d) grant easements or rights-of-way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

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

(f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, Mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;

(g) dedicate or transfer all or any part of the Common Property or interest therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority; and

(h) to sell, lease or otherwise convey all or any part of its properties and interest therein;

provided, however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (2/3) of both Class A and Class B Members.

**2.05**      Types of Common Property.      At the time of the conveyance of any real property or grant of easement by, the

Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of both Class A and Class B Members of the Association, be used for any different purpose or purposes. For so long as Declarant owns at least one (1) Lot held primarily for sale, the Common Property may not be used for any different purpose without the written consent of the Declarant.

**2.06 Drainage Ponds and Drainage Detention Areas.** A drainage detention pond, retention pond, or similar area (referred to herein as the "Detention Pond") has been required by Fulton County, Georgia, and is shown and depicted on that final plat of the Development referred to in Section 1.14 of this Declaration (referred to herein as the "Plat"). All such Detention Ponds shall be deemed to benefit the entire Development, and shall be subject to a perpetual easement in favor of the Association for their maintenance and repair. The easements established herein shall be considered "Common Property". The Association shall maintain the Detention Ponds in accordance with such standards as may be now or hereafter established by Fulton County, Georgia, and in connection therewith the Association shall perform the following duties and responsibilities with the understanding that Fulton County, Georgia shall rely thereon:

(a) At its sole cost and expense the Association shall (i) maintain the Detention Pond in a structurally sound condition so that it satisfies the drainage function for which it was intended, (ii) maintain the Detention Pond in a clean and safe condition so as not to constitute a hazard or nuisance to the public, and (iii) maintain the Detention Pond in accordance with all rules, standards and regulations applicable thereto as may from time to time be enacted by any governmental agency or authority, including Fulton County. Fulton County is hereby relieved of all responsibility for the maintenance of the Detention Pond for the term of this Declaration.

(b) During and throughout the term of this Declaration, the Association shall indemnify and hold harmless Fulton County, its officers, agents and employees from all damages, liability, claims, demands, attorneys' fees and legal costs, relating to or arising from: (i) the drainage function of the Detention Pond, including the construction, maintenance, operation and use of the Detention Pond, and (ii) the increase of the flow

of water or diversion of the flow of water resulting from the Detention Pond.

(c) The Association hereby authorizes Fulton County to enter upon the Property for purposes of inspecting the Detention Pond, but written notice of Fulton County's intention to so enter must be given to the Association at least twenty-four (24) hours in advance of said entry. Except, however, in the event of an emergency threatening loss of life or valuable property rights, in which case Fulton County is hereby granted immediate access to the Detention Pond, and the right, but not the obligation, to perform any required maintenance, the cost of which is to be paid by the Association, as provided in subsection (d) below.

(d) In the event maintenance required by Fulton County is not performed by the Association after thirty (30) days written notice from Fulton County, Fulton County shall have the right (but not the obligation) to enter the property for the purpose of performing such maintenance. The cost of such performance shall be billed to the Association and the Association shall promptly reimburse Fulton County for such costs within thirty (30) days after receipt of such billing. Failing such reimbursement, Fulton County shall be entitled to a lien upon the Development for the full amount of such costs.

(e) Upon the execution of this Declaration and an Owners Indemnification and Maintenance Agreement for Detention Ponds (hereinafter referred to as the "Maintenance Agreement") by the Declarant, Fulton County shall approve the final subdivision Plat and the Detention Pond in accordance with plans and specifications approved by Fulton County. Specifically, the Declarant and the Association are prohibited from the importation of fill into the Detention Pond, and any modification to the approved outlet structure without Fulton County's approval. Further, the Association is to keep a maintenance log concerning activities within the Detention Pond to be made available to Fulton County upon written request.

(f) The terms of this Declaration with respect to the Detention Pond shall take effect upon the date hereof and shall continue in effect for so long as the Detention Pond is in existence. Further, the terms of this Declaration shall apply to all such Detention Ponds, if more than one.

(g) All notices to be given or permitted to be given to Fulton County or permitted to be given by Fulton County in connection with this Section 2.06 must be in writing and shall be deemed to have been properly given or served by depositing the same in the United States Mail, postage prepaid, registered or



certified, return receipt requested, and addressed to the appropriate address set forth below, or to such other address as either party may advise the other by proper notice. All notices shall be deemed received on the third business day following the deposit of same in the United States Mail, the date of deposit not being included therein. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such notice.

For Fulton County: Fulton County Government Center  
141 Pryor Street, S.W.  
Suite 2085  
Atlanta, Georgia 30303

For the Declarant  
and Association: C/O Woodcliff Development, L.L.C.  
5930 Post Road  
Cumming, Georgia 30130

(h) Every purchaser or grantee of any interest in any real property now or hereafter subject to these Restrictions, by acceptance of a deed or other conveyance therefor, thereby acknowledges the responsibilities of the Association as set forth herein, and further acknowledges that upon the incorporation of the Association and the execution and recordation of this Declaration in the real estate records of Fulton County Georgia, Declarant and Hedgewood Properties, Inc. shall have no further obligations under the Maintenance Agreement, except as may be specifically set forth in this Section 2.06 to the extent that Declarant is an Owner of a Lot or Lots, and only then to the extent that Declarant is responsible for assessments.

**2.07 Entrance Easements and Entrance Monuments.** It is contemplated that certain easements for landscaping or for the erection and maintenance of entrance monuments, subdivision signs, walls, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Development will be reserved by the Declarant and may be set forth on plats of survey of the Development recorded in the County records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. Such easements are hereby reserved for and on behalf of the Declarant and the Association for all improvements and landscaping located at the entrance of the Development and intended for the

identification and the beautification of the Development. All Owners taking title to any Lot upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the instrument conveying such easements to the Association. Such easements shall be Common Property. In addition, or alternatively, such entrance monuments and other similar improvements, may be constructed within or upon rights-of-way within the Development, in which case, such improvements shall be maintained by the Association as any other Common Property. In addition to any easements which may be created in accordance with this Section, whether by recorded plat or by separate instrument, there is hereby reserved for the Declarant and for the Association a non-exclusive perpetual easement to maintain any improvements constructed upon the Property which are intended as entrance or landscape monuments for the identification or beautification of the Development, including landscaped areas. Said easement shall include the right of access to and from such improvements, and shall include the right to re-construct improvements and to refurbish and/or modify landscaping within all such areas.

**2.08 Encroachment Easements.** If any buildings or other improvements initially constructed by Declarant, or by any Builder on any of the Lots (including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls or roofs of such buildings) encroach onto or over or extend into the air space or any portion of the Common Property, or, conversely, if any such improvements initially constructed on the Common Property encroach onto or over or extend into the air space or any portion of a Lot, an easement for the encroachment and or the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

**2.09 Development Easements.** For so long as the Declarant (or any Builder who purchased a Homesite from the Declarant) owns at least one (1) Lot primarily for the purpose of sale, Declarant shall have alienable and transferable rights of way and easements in, on, over, through, under and across the Common Property for the following purposes:

(a) installing, maintaining, repairing and replacing such other improvements to the Property (including any portions of the Common Property) as are contemplated by this Declaration or as Declarant desires, in its sole discretion;

(b) access, ingress and egress to the Common Property and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such

right so as to unreasonably interfere with the rights of Owners in the Development to the use of the Common Property;

(c) for use as sales offices, model homes, and parking spaces in connection with Declarant's efforts to market Lots;

(d) for the maintenance of such other facilities, equipment and signs as in the sole discretion of Declarant may be reasonably required, convenient or incidental to the improvement and sale of Lots; and

(e) for doing all things reasonably necessary and proper in connection with the foregoing, provided that in no event shall Declarant have the obligation to do any of the foregoing.

**2.10**        **Delegation of Use**. Any Owner may delegate his right to use and enjoy the Common Property to the members of his family, his social invitees or his tenants who reside on a Lot. Tenants who reside on a Lot shall have the same rights of delegation as an Owner. If an Owner is not occupying his Lot as a primary residence and has leased his Lot to tenants, the Owner shall not have the right to use and enjoy the Common Property, which right may only be exercised by the tenants. Any delegation of rights must be made in accordance with the Bylaws and will be subject to reasonable regulation by the Board and in accordance with the procedures it may adopt.

### **ARTICLE III**

#### **THE HOMEOWNERS' ASSOCIATION**

**3.01**        **Purposes, Powers and Duties of The Association**. The Association shall be formed as a non-profit civic organization for the primary purpose of performing certain functions for the common good and general welfare of the people of the Development. To the extent necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) shall have the power to exercise all of the rights, powers and privileges of the Association as set forth in this Declaration.

**3.02**        **Membership in the Association**. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration.

**3.03**        **Voting Rights**. Subject to the following provisions of this Section 3.03, the Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. Every Person who is an Owner, with the exception of the Declarant except as otherwise set forth herein, shall be a Class A Member and shall be entitled to one vote for each Lot owned. When more than one Person is a Class A Member by virtue of an ownership interest in the same Lot, 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. In the event of disagreement among such Persons and an attempt by two or more of them to cast the vote of such Lot, such Persons shall not be recognized and the vote of such Lot shall not be counted. If any one of them purports to cast the votes pertaining to that Lot without protest being immediately made by the others, the consent of the others shall be conclusively presumed to have been given for the vote as cast. If only one such Person is present at a meeting, that Person shall be entitled to cast the votes pertaining to that Lot. The membership of a Class A Member shall automatically terminate upon the Member's sale of his Lot. However, no termination of Class A membership shall affect such Member's obligation to pay assessments, fines or penalties as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

(b) Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and during its existence the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to three (3) votes for each Lot owned by it; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B membership shall cease and shall be converted to Class A membership at such time as (a) the Declarant no longer owns at least one (1) Lot primarily for the purpose of sale and no Builder owns a Lot primarily for the purpose of sale which was purchased from the Declarant, or (b) the Declarant surrenders its weighted vote as established herein and the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of the Superior Court of the county in which the Property is located, whichever first occurs; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property, as security for a Development Loan to Declarant, the Class B membership shall not be terminated without the prior written consent of such Mortgagee. If at the time of termination of the Class B membership, the Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A Member.

**3.04            Board of Directors and Officers.**

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

(b) **Officers.** The number of officers and the method of election of officers shall be as set forth in this Declaration and the Bylaws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, officers of the Association shall be appointed by the Declarant until such time as Declarant no longer has the right to appoint members to the Board of Directors.

(c) **Casting of Votes.** The votes of the Members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by law.

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

(a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions, or of the Design Standards as may be adopted by the ACC, within thirty (30) days after having received notice of the same pursuant to the provisions of Sections 5.11, 6.02 or 8.02 hereof;

(b) shall be delinquent in the payment of any assessment, fine or penalty levied by the Association pursuant to the provisions of this Declaration; or

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

Any suspension shall be for the balance of the period in which said Member or Person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

**3.06 Voting Procedures.** The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the Bylaws of the Association, as each shall from time to time be in force and effect.

**3.07 Control by Declarant and Appointment of the Board.** Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, the Declarant hereby retains the right to appoint all members to the Board. The rights of Declarant to appoint members of the Board also includes the right to remove and replace appointees until such time as Declarant's rights to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove members of the Board until sixty (60) days after (a) the Declarant no longer owns at least one (1) Lot primarily for the purpose of sale and no Builder owns a Lot primarily for the purpose of sale which was purchased from the Declarant, or (b) the surrender by Declarant of Declarant's weighted vote and the authority to appoint and replace members of the Board of Directors, by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of the Superior Court of the county in which the Property is located. Notwithstanding any other language to the contrary, the Board of Directors appointed by the Declarant shall retain the power and authority to act of behalf of the Association, and to exercise all rights available to Board members until such time as a new Board of Directors has been elected. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section.

**3.08 Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property, and dwellings within the Property, and the Common Property, which rules and regulations shall be consistent with the rights and duties established by this

Declaration. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees, and licensees, if any, until and unless revised or cancelled by the Board of Directors or overruled, cancelled, or modified in a regular or special meeting of the Association by the vote of Members representing a majority of the total Class "A" votes in the Association, and by the Class "B" Member so long as such membership shall exist. For so long as Declarant owns at least one (1) Lot held primarily for sale or for so long as any Builder owns at least one (1) Lot held primarily for sale which was purchased from Declarant, no rule or regulation which modifies or affects the rights, privileges, options or exemptions of the Declarant shall be effective unless consented thereto in writing by the Declarant. The same consent shall be required of any predecessor Declarant for so long as any such predecessor Declarant owns at least one (1) Lot held primarily for sale.

**3.09**        **Enforcement.** The Association, through its Board of Directors, shall be authorized to impose sanctions for violations of this Declaration, the Bylaws, or rules and regulations adopted by the Association. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities within the Common Property. In addition, the Association, through the Board, in accordance with Article VIII of the Declaration, shall have the right to exercise the Right of Abatement to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate nuisances. The Association, through the Board, by contract or other agreement, shall have the right to enforce county and city ordinances, if applicable, and to permit the County to enforce ordinances on the Property for the benefit of the Association and its Members.

**3.10**        **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**3.11**        **Governmental Interests.** For so long as the Declarant owns any property described in Exhibits "A", the Association shall permit the Declarant to designate sites within the Property for fire, police, water, and sewer facilities, public schools and parks, and other public facilities. The sites may include Common Property owned by the Association.

**3.12 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSORS OF ANY OF THEM, SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSORS OF ANY OF THEM, SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, THE DECLARANT, THE ACC, AND THE SUCCESSORS OF ALL OF THEM, DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ACC MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, THE DECLARANT, AND THE SUCCESSORS OF ALL OF THEM, ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY Lot AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO Lots AND STRUCTURES LOCATED THEREON, AND TO THE CONTENTS OF DWELLINGS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, THE DECLARANT, AND THE SUCCESSORS OF ALL OF THEM, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

#### ARTICLE IV

##### ASSESSMENTS AND MAINTENANCE CHARGES

**4.01 Covenant for Assessments and Creation of Lien and Personal Obligations.** The Declarant, to the extent that Declarant is required herein, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:



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

(b) to pay to the Association any special assessments for capital improvements, and any fines, penalties or other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all assessments, fines, penalties and other charges are made to secure payment of such items and any penalties and interest thereon as provided in Section 4.07 hereof and costs of collection, including reasonable attorneys' fees;

(d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgement or decree or by any agreement, contract, Mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the lien of any Mortgage recorded prior to the recording of the Declaration, and (iii) the lien or charge of all first and second Mortgages of record (meaning any recorded Mortgages covering the Lot with first or second priority over other Mortgages) made in good faith and for value;

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessment thereafter assessed;

(f) that all annual and special assessments (together with interest thereon and late charges as provided in Section 4.07 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by him;

(g) that, except as provided in subsections (i) and (ii) below, the grantee in a conveyance of a Lot shall be jointly and severally liable with the grantor thereof for all

unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however,

(i) that if the grantor or grantee shall request a statement from the Association as provided in Section 4.08 of this Declaration, such grantee and said grantee's successors, successors-in-title and assigns shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement, or

(ii) in the event that the holder of a first or second Mortgage (provided that neither the grantee nor any successor grantee on the second mortgage is the seller of the Lot) or any other Person acquires title to a Lot as a result of foreclosure of any such Mortgage, such holder or other Person, and their respective successors, successors-in-title, and assigns, shall not be liable for, nor shall the Lot be subject to, any lien for assessments under the Declaration chargeable to the Lot on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an assessment or assessments shall be deemed to be a common expense collectable from all of the Owners, including any such holder or other Person, and their respective successors, successors-in-title, and assigns.

**4.02 Purpose of Assessment.** The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the community of the Development, including, but not limited to, and in addition to other purposes set forth in this Declaration, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

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

Annual Assessment or Maintenance Charge.

(a) Subject to the terms of this Article, each Lot in the Property is hereby subjected to an annual assessment or maintenance charge, which maintenance charge and assessment will be paid by the Owner or Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association). Payment of such assessments will be made in advance in monthly, quarterly, annual or semi-annual installments with the due dates being established by the Board of Directors.

(b) The annual maintenance charge and assessment will commence with respect to each Lot on the first day of the month following the earliest to occur of the following events: (i) upon the occupancy of the Lot as a residence; or (ii) upon the conveyance of the Lot by Declarant to an Owner or tenant for residential occupancy; or (iii) upon the conveyance of the Lot by a Builder who purchased the land from Declarant for the purpose of erecting a dwelling thereon to an Owner or tenant for residential occupancy. Notwithstanding the foregoing, until such time as the Declarant no longer has the right to appoint and replace members of the Board of Directors, Declarant shall have the right to delay the commencement of annual assessments; provided, however, that the decision of Declarant to delay the commencement of annual assessments can be overridden by the affirmative vote of thirty (30) Class A Members. As a matter of clarification, if thirty (30) or more Class A Members vote for the annual assessments to commence, they shall only commence upon the occurrence of those events set forth in subsections (i), (ii) and (iii) of this subsection (b).

(c) The Board of Directors shall establish the initial annual maintenance charge and assessment which amount shall be the "maximum annual assessment" for 1997 and 1998. Beginning January 1, 1999, and from year to year thereafter, the maximum annual assessment may be increased by the Board of Directors; however, the maximum annual assessment may be increased each year not more than the greater of (i) ten percent (10%) above the maximum annual assessment for the previous year, or (ii) an amount equal to the percentage increase in the Consumer Price Index, or "CPI-U", between the CPI-U for the first full month of the preceding calendar year and the last month of the preceding calendar year, without a vote of the membership, which shall require approval of two-thirds (2/3) of each class of members present, in person or by proxy, at a meeting duly called for such purpose, with at least sixty percent (60%) of the Owners or other proxies present. If sixty percent (60%) of the Owners do not attend, a second meeting may be called and the quorum will be reduced to thirty percent (30%) of the Owners or their proxies.

If not otherwise increased as provided herein, the maximum annual assessment for each successive year shall automatically increase by an amount equal to the percentage increase in the CPI-U. The annual assessment for each year shall be determined by the Board of Directors as the needs of the Development may in the judgment of the Directors require; however, the annual assessment for each year shall not exceed the maximum annual assessment set for that year. In addition, if for any reason the Board of Directors fail to determine the annual assessment for any successive year, the annual assessment for the previous year shall continue for such successive year until a new annual assessment is determined by the Board of Directors.

(d) Assessments may be used by the Association to provide for, by way of clarification, and not limitation, any and all of the following: normal, recurring maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for the existing landscaping, maintaining and repairing detention ponds and maintaining and repairing recreational facilities) and the acquisition and installation of capital improvements to such areas; provided that the Association shall have no obligation (except as expressly provided in this Declaration) to make capital improvements to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the Property to which said assessments apply; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employment of security guards or watchmen, if determined necessary; caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the; Board or membership of the Association to keep the property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that when and if presented to the Members, the judgment of the majority of the Members of the Association in the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association may also establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Property.

(e) Unless required as a matter of law, neither the Declarant, predecessor Declarants, nor any Builder who has purchased land from Declarant for the purpose of erecting a dwelling thereon, shall at any time be subject to any annual or special assessments established by this Declaration. Notwithstanding the preceding, the full annual maintenance charge

and assessment will commence as to any individual Lot owned by Declarant, predecessor Declarants, or a Builder upon its occupancy as a residence in accordance with Section 4.04 (b). If assessments are due from Declarant, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money, (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors. This subsection 4.04 (e) may only be amended with the prior written consent of the Declarant and any predecessor Declarant if any such predecessor still owns at least one (1) Lot primarily for sale.

**4.05 Special Assessments for Working Capital Fund, Uncovered Expenses, Nonrecurring Maintenance, and Capital Improvements.** In addition to the annual assessments authorized by this Article IV, the Association may levy:

(a) upon the first sale of each and every Lot to an Owner (other than a sale or transfer to Declarant, to a predecessor Declarant, or to a Builder), a special assessment payable by said Owner, equal to six (6) months' estimated regular assessments, which shall be collected at the closing of such sale for the benefit of the Association. The aggregate fund established by such special assessment shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet its expenses, including regularly budgeted expenses, as well as unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board, and to reimburse Declarant for certain contributions in accordance with Section 4.09 of this Article; and

(b) in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part any Association expenses not covered by the annual budget, including, but not limited to, the cost of nonrecurring

maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that in the event any such special assessment exceeds one-half of the regular annual assessment for that year, the amount in excess thereof shall have been approved by a majority vote of each class of Members of the Association who are present in person or by proxy at a meeting duly called for such purpose.

**4.06**        Notice and Quorum. Written notice of any meeting called for the purpose of taking any action requiring vote under Sections 4.04 or 4.05 shall be sent to all members, or delivered to their residence, not less than twenty-one (21) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, 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 preceding meeting.

**4.07**        Effect of Nonpayment of Assessment.

(a)    Late Fees and Interest on Unpaid Charges. If any assessment or installment is not paid within fifteen (15) days after that due date there shall be imposed a late or delinquency charge in the amount of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due. Any assessment or installment, and any late charge connected therewith, which is not paid within thirty (30) days after the due date of the assessment shall bear interest (from the due date with respect to the assessment or installment, and the date such charge was imposed with respect to the late charge), at the rate of ten percent (10%) per annum or at such rate as the Board may from time to time establish; provided, however, that in no event shall the Board have the power to establish a rate of interest which exceeds the maximum rate allowed by the Georgia Property Owners' Association Act.

(b)    Acceleration of Assessments. If any one or more installment of any assessment is not paid within thirty (30) days after the due date the Board may declare any remaining balance of the assessment at once due and payable.

(c)    Charges Included as Part of Lien and as Personal Obligation of Owner. In the event that an Owner shall fail to pay fully any portion of any assessment or installment on

or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with any delinquency charges, interest, costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees, and the fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure or until the judgement rendered in the action is otherwise satisfied, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

(d) **Foreclosure.** In the event that an Owner shall fail to pay fully any portion of such Owner's obligations due and payable within thirty (30) days after notice thereof is sent to the Owner by certified mail, return receipt requested, the lien described herein, as well as the lien of any assessments, charges, fines, costs of collection and attorney's fees established elsewhere in this Declaration may be foreclosed by the Association by an action, judgement, and foreclosure in the same manner as other liens for the improvement of real property. The notice shall specify the amount of the assessments or other charges then due, together with authorized late charges and interest accrued thereon.

(e) **Notification of Mortgagee.** In addition to other rights of the Association, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within sixty (60) days after the Due Date of the assessment or installment, the Association shall have the right to notify any or all Mortgagees having a security interest in such Owner's Lot or Lots that such Owner is in default in the performance of his obligations under these Restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.

**4.08** **Certificate of Payment.** Upon written request, an Owner, a Mortgagee of a Lot, a Person having executed a contract for the purchase of a Lot, or a lender considering a loan of funds to be secured by a Lot, shall be entitled upon request to a statement from the Association (or its management agent) setting forth the amount of assessments, fines and penalties, past due and unpaid together with late charges and interest applicable thereto against the Lot. All such requests shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association, within five (5) business days from the receipt of such request, to mail or otherwise furnish such a statement to the party requesting the same to the address directed