

STATE OF GEORGIA  
COUNTY OF COBB

Return to:  
Rome & Associates, P.C.  
707 Whitlock Ave., Ste E-15  
Marietta, Georgia 30064  
(770) 428-6002

*Cross Reference: Deed Book 13294, Page 3352.*

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**AMENDED & RESTATED DECLARATION OF PROTECTIVE COVENANTS  
AND PERMANENT MEMBERSHIP FOR FALCON HILLS**

This Amended & Declaration of Protective Covenants, Conditions, and Restrictions (“Declaration”) is made on the date hereinafter set forth by Falcon Hills Homeowners and Recreation Association, Inc. (“Association”).

**WITNESSETH:**

WHEREAS, the Association recorded that certain Declaration of Protective Covenants and Permanent Membership for Falcon Hills on the 20th day of September 2000, at Deed Book 13294, Page 3352, et seq. as may have been amended from time to time, in the records of Cobb County, Georgia (“Original Declaration”);

WHEREAS, Section 14 of the Original Declaration provides for amendment by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Permanent Members of the Association holding at least sixty-six and two-thirds (66-2/3%) percent of the total eligible vote of such Members;

WHEREAS, Owners wish to amend the Original Declaration, and also wish to clarify the relationship between Falcon Hills subdivision and The Preserve at Falcon Hills neighborhood;

WHEREAS, Permanent Members Owners holding at least sixty-six and two-thirds (66-2/3%) percent of the total eligible vote, consented in writing to the Declaration, as certified to by the attached signature of the Association’s representatives; and

WHEREAS, the following amendments are not material with respect to first mortgagees in that the amendments do not materially and adversely affect the security title or interest of any first mortgagee; provided, however, in the event a court of competent jurisdiction determines the amendments or a portion of the amendments materially and adversely affect the security title or interest of any first mortgagee without such first mortgagee’s consent to the amendments, then the amendments so determined by the court shall not be binding on the first mortgagee so involved, unless such first mortgagee consents to this amendment; and if such consent is not forthcoming, then for those amendments so determined by the court the corresponding provisions of the Original Declaration prior to this amendment shall control with respect to the affected first mortgagees.

NOW, THEREFORE, the Original Declaration is amended in its entirety (except as to the provisions incorporated by reference in Article II of this Declaration) and the following is simultaneously substituted therefore:

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**THIS DECLARATION IS SUBJECT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS’ ASSOCIATION ACT, O.C.G.A. SECTIONS 44-3-220, ET. SEQ.**

**CLOSING ATTORNEYS AND TITLE EXAMINERS MUST CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS/CHARGES DUE ON LOTS.**

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*AMENDED & RESTATED DECLARATION OF  
PROTECTIVE COVENANTS AND PERMANENT  
MEMBERSHIP FOR FALCON HILLS*

**Background Statement**

Now, therefore, the Association hereby declares that the property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and Georgia Property Owners Association Act, O.C.G.A. § 44-3-220, et seq. and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all Persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every Owner of all or any portion thereof.

**Article I**  
**Definitions**

The following words, when used in this Declaration or in any amendment thereof (unless the context shall prohibit), shall have the following meanings:

(a) “Act” shall mean the Georgia Property Owners’ Association Act, O.C.G.A. § 44-3-220, et seq., as may be amended.

(b) “Association” shall mean and refer to Falcon Hills Homeowners and Recreation Association, Inc. a Georgia nonprofit corporation, its successors and assigns.

(c) “Board of Directors” or “Board” of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Georgia corporate law.

(d) “Bylaws” shall refer to the Bylaws and any amendments thereof for Falcon Hills Homeowners and Recreation Association, Inc.

(e) “Common Property” shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(f) “Community” shall mean and refer to that certain real property and interests therein described in Article II, and/ or its Mortgagee or transferee, as provided in the Declaration, and such additions thereto as may be made by the Association (as provided in the Declaration) of other real property.

(g) “Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association in the development of guidelines, restrictions, regulations and rules.

(h) “Falcon Hills Subdivision” shall mean that property in Units 1 & 2, described in Plat Book 108, Page 12 & Plat Book 124, Page 31 of the Cobb County records.

(i) “Lot” shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or could constitute, after the construction of improvements, a single dwelling site as shown on the plat for the Community, or amendments thereto, recorded in the land records of the county where the Community is located. If a vacant Lot adjoins another Lot upon which there is a dwelling, and both Lots are owned by the same person, the two Lots shall only constitute one Lot for purposes of assessments and voting. The Ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

(j) “Majority” means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%).

(k) “Mortgage” means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(l) “Mortgagee” shall mean the holder of a Mortgage.

(m) “Occupant” shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(n) “Owner” shall mean and refer to the record Owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(o) “Permanent Member” or “Member” shall mean and refer to a person who is the Owner of a Lot which has been subjected to Permanent Membership in the Association as described in Article III, Section 1 of this Declaration.

(p) “Permanent Recreation Member” shall mean and refer to a person who is the Owner of a Lot in The Preserve at Falcon Hills neighborhood, which membership shall obligate said Owner to payment of mandatory annual assessments to the Association, and in turn shall be permitted to use of the amenities and common areas of Falcon Hills subdivision, subject to being current in payment of assessments to both the Association and the Preserve Association, in addition to complying with the Association’s rules and regulations regarding the amenities and common areas.

(q) “Person” means any natural person, as well as a corporation, joint venture, partnership (general or limited), Association, trust, or other legal entity.

(r) “Preserve Association” shall mean and refer to The Preserve at Falcon Hills Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

(s) “Quorum” shall have the same meaning as it is defined in the Bylaws.

(t) “The Preserve at Falcon Hills Neighborhood” or “Preserve Neighborhood” shall mean the property described in Plat Book 225, Page 37 of the Cobb County records.

(u) “Total Association Vote” means all of the votes attributable to Permanent Members of the Association, including Permanent Recreational Members, but does not include those Lot Owners who have had their right to vote suspended pursuant to the Declaration and/or Bylaws.

## **Article II**

### **Property Subject To This Declaration**

**Section 1. Property Hereby Subjected To This Declaration.** All real property previously subjected to the Original Declaration is hereby included by reference thereto, and by the recording of this Declaration, is subject to the covenants and restrictions hereafter set forth, and which is held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered. All said property is hereby submitted to the Georgia Property Owners’ Association Act, O.C.G.A. § 44-3-220, et seq., as such act may be amended from time to time.

**Section 2. Other Property.** Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, the Association has the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

**Article III**  
**Association Membership and Voting Rights**

**Section 1. Permanent Membership.** The following two classes of owners are considered Permanent Members of the Association, which Permanent Membership shall be appurtenant to and may not be separated from ownership of any such Permanent Membership Lot:

(i) ***Falcon Hills Subdivision.*** Each Person who is the record owner of a fee or undivided fee interest in any Lot within the Falcon Hills subdivision who was also a signatory to the Original Declaration, or subsequently executed and recorded a consent submitting their Lot to the Original Declaration, shall be a Permanent Member of the Association and shall be entitled to vote as set forth herein and in the Bylaws of the Association. Any Owner in Falcon Hills subdivision, who is not a Permanent Member of the Association, may also submit their Lot to Permanent Membership by executing and recording a consent, in a format approved by the Association.

(ii) ***The Preserve at Falcon Hills Neighborhood.*** Each Person who is the record owner of a fee or undivided fee interest in any Lot within The Preserve at Falcon Hills subdivision shall be a Permanent Recreation Member of the Association, pursuant to Section 3.4 of the Declaration of Protective Covenants, Conditions, Restrictions and Easements for The Preserve at Falcon Hills, and as defined in Article I, Sub-section (o) of this Declaration.

**Section 2. Voting.** All Permanent Members in good standing who have paid dues for that year shall be entitled to one (1) equal vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it. Any votes by Lot Owners who are not a natural person, shall be controlled by Section 44-3-224(b) of the Georgia Property Owners Association Act.

The voting rights of a Lot are automatically suspended upon the non-payment of Association assessments, fines, or any other charges owed to the Association, and which, are more than 30 days delinquent. The voting rights of a Lot may also be suspended for other violations of the governing documents for a set period of time, and subject to the same notice procedures as outlined for the levy of fines.

Permanent Recreation Members are considered voting members of the Association except as to any covenant amendments involving use restrictions (including architectural), which do not affect them. Permanent Recreation Members will vote on covenants involving Falcon Hills' assessments and the common property. The Association hereby requests that at least one seat on the Board be filled by a member of the Preserve Association, utilizing the normal election procedures. If there is no member elected from the Preserve to serve on the Board of the Association, the seat shall be filled with a member from Falcon Hills subdivision, utilizing the normal election and appointment procedures in the Association's Bylaws.

**Section 3. Relationship With The Preserve at Falcon Hills.**

(a) **History of Relationship.** The Declaration of Protective Covenants and Permanent Membership for Falcon Hills subdivision was recorded on September 20, 2000 at Deed Book 13294, Page 3352 et seq. of the Cobb County Superior Court. Subsequently, the Declaration of Protective Covenants, Conditions, Restrictions and Easements for The Preserve at Falcon Hills subdivision was recorded on October 28, 2003 at Deed Book 13877, Page 53 et seq. of the Cobb County Superior Court.

The Preserve does not have a separate entrance to the main road, but does have it's own entrance area and sign where it meets the Falcon Hills subdivision. In addition, the Preserve Association owns common area in the Preserve at Falcon Hills neighborhood.

The covenants for Falcon Hills did not contain a reference to The Preserve at Falcon Hills subdivision or its covenants, but the subsequent covenants filed for The Preserve at Falcon Hills contained the following provision: *3.4 Membership in Falcon Hills Association. Every Owner, by acceptance of a deed to a Lot, acknowledges that the Lot is subject to the Falcon Hills Declaration. Such Owner is automatically a member of the Falcon Hills Association.*

In approximately 2002 an agreement was reached between the Association and Pritchard Brothers, Inc., who was the developer of The Preserve at Falcon Hills. In return for various repairs and upgrades to the common areas and amenities in the Falcon Hills subdivision, the Association would allow for all the lot owners in The Preserve at Falcon Hills to be permanent members of the Association, and subject to the covenants for Falcon Hills. This was in addition to the owners in The Preserve at Falcon Hills being subject to the covenants for The Preserve and mandatory members of The Preserve at Falcon Hills Homeowners Association, Inc.

**(b) Nature and Practice of Relationship.**

The agreement between the Association and the developer of The Preserve was not filed of record, and although there are documents related to the terms of the agreement, the Association does not have a copy of any formal written agreement.

Nothing further was filed, or otherwise documented, regarding the exact nature of the relationship and interactions between the two associations and their members. Based upon the general understanding by the Owners in both subdivisions, the practice through the years has been that the Owners in the Preserve are considered permanent members in Falcon Hills only to the extent of a right to use of the common areas and amenities located in Falcon Hills subdivision, but outside the Preserve neighborhood.

Both parties have otherwise treated the covenants of each subdivision as acting independent of the other, as opposed to a typical Master Association and Sub-Neighborhood. In other words, all of the Owners interpreted the relationship as meaning that the use restrictions in the covenants for Falcon Hills did not apply to the Preserve neighborhood. Part of the Owners' beliefs were based upon the fact that the use restrictions for the Falcon Hills' did not appear in the Declaration, but were instead incorporated by reference from earlier filed covenants.

The Association for the Preserve collects separate assessments from the owners in the Preserve, and maintains the limited common areas and entrance area for the Preserve. In effect, the relationship between the two subdivisions and associations is similar to a shared amenities agreement between two different neighborhoods. Both of the associations will continue to treat the covenants of Falcon Hills and the Preserve as separate from each other, except to the extent that the covenants in the Falcon Hills covenants regarding assessments and the use of amenities will also apply to Owners in the Preserve neighborhood.

**Article IV**  
**Assessments**

**Section 1. Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors. Payment of assessments is not optional, regardless of use of the common property, and must be paid on time. The funds obtained from assessments grant access to the pool, tennis courts, playground, and social events for all Permanent Members. The Association's use of the funds also includes, but is not limited to, landscape and upkeep of the common property.

**Section 2. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association for each Lot owned: (i) annual assessments or charges; (ii) special assessments,



such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration or Bylaws, and any charges enumerated in the below Sections of this Article IV. Such assessments and charges shall, from the time the sums became due and payable, constitute a lien in favor of the Association on the Lot. The Association, in the Board's discretion, may, but shall not be obligated to, record a Statement of Delinquent Assessments & Notice of Statutory Lien on the County lien records. The lien provided for herein shall have priority as provided in the Act.

All such assessments, together with late charges, interest, costs, and reasonable attorney fees actually incurred (including post-judgment attorney fees, costs & expenses), and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made.

Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Other than provided 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, that if the grantor or grantee shall request a statement from the Association as provided below, such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the property Owner's Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

In the event that the holder of a first priority mortgage or secondary purchase money mortgage of record, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the Lot, or in the event that any other person acquires title to any Lot as a result of foreclosure of any such mortgage, such holder or other person and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot be subject to any lien for assessments or under any instrument 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 the grantor/prior Owner, and his or her estate, successors, successors-in-title, and assigns.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided by the Board, annual assessment shall be paid on the first day of the Association's fiscal year. If the Board so elects, assessments may be paid in installments and the Association may charge a reasonable service fee thereon. If any Owner is delinquent in the payment of any assessments or other charges the Board may require any unpaid installments for the remaining fiscal year to be paid in full immediately.

The obligation to pay assessments is an independent covenant running with the land. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

**Section 3. Certificate of Status Regarding Assessments/ Estoppel Letter.** Any Owner, mortgagee, or a person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) business days of receipt of the request for

a statement; provided, however, the Association may require the payment of a reasonable fee as authorized under the Act as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

If the Association does not require payment of the fee as a prerequisite to providing the statement of account, or if the statement of account is requested within a period shorter than five (5) business days, the Association, or its agent, may subsequently charge a reasonable fee in an amount larger than the maximum amount set by the Act, including any late payment fees, or other related costs including but not limited to fax, overnight delivery, research fee, and reasonable attorney fees actually incurred. If the statement of account is requested within a period shorter than three (3) business days, the Association or its agent may also charge a rush fee.

The Association, or its agent, may charge for ancillary expenses unrelated to providing the statement of account, including but not limited to; title transfer fees, providing copies of the governing documents, and providing completed lender questionnaires. If any of the above-related fees are not paid in full the Association shall not be obligated to release any liens. The unpaid fees and costs shall be the responsibility of the Seller/Owner, shall be considered an assessment on the Lot, and may be collected as provided in these covenants for other assessments, including the filing of a Statement of Delinquent Assessments & Notice of Statutory Lien on the county records.

**Section 4. Computation of Assessments.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include the amount of the annual assessment, and may also include a contribution to a long-term maintenance, repair, and replacement reserve account. The budget is an estimate and shall not operate as an absolute limitation on expenditures by the Board, which shall be approved by the Board at the annual meeting. Annual assessments shall be applied on a uniform and equal basis for each Lot.

The annual assessment shall remain the same as the previous year unless approved by a majority of the Total Association Vote by ballot and electronic voting, which excludes members not in good standing. The Board shall send a copy of the budget and the amount of the assessment to be levied against each Lot for the following year to each Permanent Member, including Permanent Recreational Members, at least thirty (30) days prior to the end of the current fiscal year via one of the following methods: (i) U.S. mail; or (ii) hand delivery; or (iii) via electronic means to an email address supplied by the Owner to the Association. In the event the proposed assessment is disapproved, then the assessment in effect for the then current year shall continue for the succeeding year.

If the annual assessment and budget are to remain the same as the previous year, then the Board must make this information easily accessible to each Permanent Member and may deliver via one of the methods listed previously or may electronically publish this information.

**Section 5. Initiation Fee Upon Closing or Transfer of a Lot.** Each time a Lot is sold, or title is otherwise transferred to a third party (other than to the Owner's spouse; through inheritance; or by foreclosure), the Association may charge a one-time initiation fee in an amount to be set by the Board, but not to exceed the amount of the then current annual assessment, which may change from year to year. This fee shall be charged to any purchaser or transferee of a Lot; is in addition to the annual assessment; and shall not be considered an advance upon the payment of the annual assessment. A delinquent initiation fee may be collected in the same manner as other assessments, including the filing of a lien.

**Section 6. Special Assessments.** In addition to the other assessments authorized herein, the Association may levy special assessments in any year for unexpected catastrophic losses, extraordinary maintenance, repair, and replacement costs, or for any other shortfall in the annual budget. The Board may impose the special assessment so long as the total amount of special assessments allocable to each Lot does not exceed in any one fiscal year an amount equivalent to the then annual assessment. Except as provided in Article VIII, Section 2, hereof regarding damage and destruction of common property, any special

assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a majority of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. Special assessments should not be levied on a continuous yearly basis, and limited to the uses and purposes outlined above.

**Section 7. Specific Assessments.** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

Specific assessments shall include the following:

- (i) Fines levied pursuant to this Declaration;
- (ii) The costs of maintenance performed by the Association, which the Owner is responsible for under Article V, Section 2, of this Declaration;
- (iii) Any expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots, or by the licensees or invitees of any such Lot or Lots, shall be specially assessed against the Lot or Lots, for which the conduct of any occupant, licensee, or invitee occasioned, any such expenses;
- (iv) Expenses of the Association, which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots, which are benefited according to the benefit, received; and
- (v) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

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

Any assessments, installments or other charges, which are not paid when due shall be considered delinquent, and shall incur a late charge equal to the greater of ten dollars (\$10.00) or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act. The delinquent assessments, including late charges, shall incur simple interest at the rate of ten percent (10%) per annum, or such higher amounts as may be authorized by the Act.

The Association shall also be entitled to costs of collection, including court costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees); and any expenses required for the protection and preservation of the Lot.

The Association may levy other fees provided or permitted by law, including charges for returned check. The Association may also file a Statement of Delinquent Assessments & Notice of Statutory Lien on the county lien records.

If any assessments, installments or other charges remain unpaid for more than thirty (30) days the voting rights of a Lot Owner and the right of an Owner to use the common areas and/or recreational facilities shall be automatically suspended without notice until such time as the balance is paid in full or unless otherwise restated in writing by the Association.

Partial payments shall not constitute payment in full, unless agreed to in writing by the Association. Any partial payments shall be applied in the following order of priority: post-judgment reasonable attorney's fees, costs, and expenses actually incurred, then to reasonable attorney's fees and costs actually incurred and not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies which are created by the application of current payments to outstanding delinquent assessments or charges. All of the foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment, including an offer of accord and

satisfaction in settlement of a bona fide dispute. The Association may, but shall not be obligated to, allow any delinquent assessments, fines, or fees to be paid in installments, and may charge a reasonable service fee thereon.

## **Article V** **Maintenance**

**Section 1. Association's Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall maintain all entry features for the Community and private street signs. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

**Section 2. Owner's Responsibility.** Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration, which includes but is not limited to, keeping the dwelling and Lot in a readily marketable condition as to exterior painting, fence repair, and lawn care. An Owner should inspect the exterior of the Lot & Dwelling every six months.

## **Article VI** **Association Rights.**

The Association, acting through its Board of Directors, shall have the right and authority, in addition to all other rights it may have:

- 1) To make and enforce reasonable rules and regulations governing the use of the Common Property;
- 2) To enforce the provision of this Declaration and the Bylaws and rules and regulations;
- 3) to enforce the protective covenants for Falcon Hills recorded in the Cobb County, Georgia records as provided herein and in the Bylaws. These powers, however, shall not limit any other legal means of enforcing the Declaration, Bylaws, and rules and regulations by either the Association or, in an appropriate case, by an aggrieved Owner.
- 4) To grant permits, licenses, utility easements, and other easements, permits, public right-of-way or licenses necessary for the proper maintenance or operation of the Common Property under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Common Property, subject to the provisions set forth in this Declaration;
- 5) To control, manage, operate, maintain, replace and, in the Board's discretion, improve all portions of the Common Property in accordance with the Declaration and Bylaws;
- 6) To deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;
- 7) To represent the Members in dealing with governmental entities including the Common Property;
- 8) To acquire, hold and dispose of tangible and intangible personal property and real property; and
- 9) To pre-approve or disapprove, modifications to a Lot or the exterior of a house or other structure.

## **Article VII** **Use Restrictions and Regulations**

**Section 1. General.** This Article, beginning at Section 2, sets out certain use restrictions, which must be complied with by all Owners and Occupants within Falcon Hills. These use restrictions do not affect the Owners in The Preserve at Falcon Hills and may be amended only in the manner provided in Article XIII,

Section 3, regarding amendment of this Declaration. The Board of Directors may, from time to time, without consent of the members, promulgate rules and regulations further defining and clarifying said use restrictions.

All improvements, construction, and maintenance shall be performed consistent with the Community-Wide Standard to maintain the harmony of the community. This Article shall not apply to improvements to the Common Property by or on behalf of the Association. Each Owner shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration.

No modifications shall be erected, placed, or altered on any Lot, the exterior of a house (or structure) in Falcon Hills until the building plans, specifications and location of such building has been approved in writing by the Board, or its designee, to maintain conformity, harmony of external design, and general quality with the existing standards of the neighborhood.

**Section 2. Home Offices.** Home offices are allowed under the following conditions:

- a) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the building.
- b) The business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage.
- c) Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles or other vehicles.
- d) Home office needs should not obstruct access in the street.

**Section 3. Signs.** No permanent sign of any kind shall be erected by an Owner or Occupant within the Community without the written consent of the Board except the following: such signs as may be required by legal proceedings; not more than one (1) "For Sale" sign consistent with the Community-Wide Standard, having a maximum area of five (5) square feet; and standard size home security company signs or decals. The Board shall have the right to erect any reasonable and appropriate signs.

Temporary signs may be allowed for a reasonable time frame based on the nature of the sign. Signs for political candidates or ballot proposals, may be allowed without the written consent of the Board, provided that the sign is less than five square feet.

**Section 4. Vehicles & Parking.** Vehicles within the Community shall first be parked in the Designated Parking Areas, which shall consist of the garage or driveway of the Owner's Lot when possible. Vehicles may be parked in the street as a temporary last resort by the resident, or as needed for brief entertaining of guests pursuant to Cobb County regulations. Campers, boats, and other recreational vehicles must be parked on a hard surface next to or behind the dwelling. Vehicles shall not be parked on the Common Property, except as determined pursuant to regulation by the Board.

The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, automobiles, and any other motorized devices that are capable of being ridden.

**Section 5. Leasing Restrictions.** Leasing within the Community is restricted as pursuant to the terms contained in **Exhibit "A"**, which is attached hereto and incorporated herein.

**Section 6. Occupants Bound.** All provisions of this Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of any Lot even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

**Section 7. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number. Dogs which are household pets must be confined to a leash whenever they are outside a Lot. The Owner or Occupants shall pick-up any droppings left by their pet outside of the Owner or Occupant's Lot. Occupants and Owners shall obey all governmental laws regarding pets and animals.

**Section 8. Nuisance.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property adjacent to the Lot that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier, or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. The Board of Directors may pass regulations enumerating specific types and examples of nuisances.

**Section 9. Unightly or Unkempt Conditions.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors. The pursuit of hobbies or other activities, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. There shall be no clotheslines erected on any building lot. No clothing may be hung visible from the street.

**Section 10. Satellite Dishes & Antennas.** No exterior antennas, satellite dishes or multi-channel multi-port distribution service larger than one meter in length or diameter shall be placed, allowed, or maintained upon any portion of a Lot. All above referenced devices measuring one meter or less shall be installed in accordance with FCC rules and regulations, and shall not be placed in plain view from the street, unless it is the only location that allows for receiving an acceptable quality signal.

**Section 11. Gardens. Play Equipment. Etc.** No vegetable garden, trampoline, hammock, or play equipment may be placed, erected, allowed, or maintained in front of the main dwelling line on any Lot.

**Section 12. Trees.** Dead or diseased trees should be removed. Ivy should not be allowed to live on trees for an extended period of time. A living fence made of trees or shrubs may be used in the back yard and in the side yards between homes but may not be placed in the front yard in between the residence and the street so as to enclose the yard. Shrubs against the home are exempt from being a living fence. Trees should not be planted within the county easement area along the street for utility access, which is at most twenty feet, and can vary from one property to the next. This information can be found on a property's recorded plat.

**Section 13. Sight Distance at Intersections.** All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

**Section 14. Flags and Flagpoles.** Owners may attach a single temporary or permanent flagpole to the side of their home without approval from the Board or its designee. Patriotic flags, the American flag, or other flags consistent with the Community-Wide Standard, are allowed without approval from the Board or its designee. Any offensive flags are prohibited. Freestanding flagpoles are not permitted in any portion of the Community, except for flags and flagpoles installed by the Association upon Common Areas.

**Section 15. Subdivision of Lot.** No Lot shall be subdivided, or its boundary lines changed.

**Section 16. Alternative Energy Devices.** Solar panels or solar roof tiles may be used and anchored to a roof of a residence as long as it is on the back side of the home. All other artificial or man-made devices which are designed or used for collection of or heating by solar energy, or any other alternative energy devices may not be used without a 2/3s affirmative vote of the membership. Small solar lights may be used in the front yard.

**Section 17. Fences.** Under no circumstances shall any fence be placed, erected, allowed, or maintained closer to any street than the rear of the residence on such Lot. Metal, wood, and wood looking fences may be used in the back yard and facing the street. This includes vinyl and composite materials as long as they are similar to wood in appearance and style. However, any fences running parallel with the street may not be made of chain link unless installed by the Association on Common Property. Stone may be used to make posts for the approved materials listed above but may not be used to make a fence. A thin wire mesh may be used on the inside of wood or wood looking fences as long as it is minimally visible and not chain link. Barbed wire fences, post and wire fences or mesh fences, metal privacy or security fences, and stackable stones enclosed in wire mesh are strictly prohibited within the community. For restrictions on living fences, see the trees section.

**Section 18. Other.** Any holiday or celebration decorations may be used for a reasonable amount of time. No retractable awnings may be used on the front of a home. No metal roofs may be used on homes.

**Section 19. Detached Structures.** No detached structure (even of a temporary nature) shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Board or its designee. With Board approval, residence may build one detached structure not to exceed two stories in height for use as a private garage for not more than three cars and living quarters may be installed and maintained. However, a small shed less than 49 square feet does not require board approval as long as it is in the backyard. Sheds may not be located in the front or side yard.

All detached structures must be consistent in design materials and color with the dwelling on the Lot. No trailer, camper, shack, tent, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently. Carports are strictly prohibited. This Section shall not be construed to prevent those engaged in construction from using sheds or other temporary structures during such construction.

**Section 20. Above-Ground Pools.** Above-ground swimming pools shall not be permitted in the Community.

**Section 21. Window Treatments.** No foil or other reflective material shall not be used on any windows for such screen, blinds, shades, or for any other purpose, nor shall window mounted air conditioner or heating units be visible from the street.

**Section 22. House Construction Requirements.**

(a) **House Usage.** All Lots in the tract shall be used for residential purposes only. No structures shall be erected, placed, altered, or permitted to remain on any Lot other than one single-family dwelling not to exceed two stories in height exclusive of basement, one detached structure not to exceed two stories in height for use as a private garage for not more than three cars and a servant's quarters and other outbuildings incidental to residential use of Lot.

(b) **House Location.** No building shall be located nearer to the front line or nearer to the side street line that building setback lines shown on recorded plat. No building on any Lot shall be located nearer than

ten (10) feet to an inside lot line except that the inside lot line restrictions shall not apply to detached garage located one hundred (100) feet or more from the front lot line, in which event no portion of such building shall be less than five (5) feet from the side and rear lines of said Lot.

**(c) House Definition.** Any one story or split-level dwelling on any Lot in FALCON HILLS shall cover a ground area of not less than 1,400 square feet and any two-story dwelling shall cover a ground area of not less than 800 square feet, with a combined footage on both levels of not less than 1600 square feet. Any story and a half dwelling on any Lot in FALCON HILLS shall cover a ground area of not less than 900 square feet with total footage of 1500 square feet on both levels. The square footage mentioned above is exclusive of areas contained in open porches, carports, and garages. No dwelling may exceed two stories in height, exclusive of the basement.

**(d) House External Material.** No concrete blocks either in buildings, walls, or fence posts shall be used above finished ground elevations of residences unless said blocks are covered with brick, stone, or stucco.

### **Article VIII** **Insurance and Casualty Losses**

**Section 1. Insurance.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article V, Section 1 hereof. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). The Board shall also obtain 'directors and officers' liability insurance in the coverage amount of at least One Million Dollars (\$1,000,000.00).

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in Georgia.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Association's Board of Directors shall be required to-make every reasonable effort to secure insurance policies that will provide for the following:



- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- (iii) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any one or more individual Owners;
- (iv) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
- (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (vi) that no policy may be cancelled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees, and other Persons handling or responsible for the Association's funds. The amount of fidelity or employee's dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD").

## **Section 2. Damage and Destruction - Common Property.**

**(a) In General.** Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty allowing for any changes or improvements necessary to comply with applicable building codes. The Board of Directors shall have all enforcement powers specified in Article XIII, Section 1, of this Declaration necessary to enforce this provision.

**(b) Repair and Reconstruction.** Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least two-thirds (2/3rds) of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall,

without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

**Section 3. Damage and Destruction -Lots.** The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris there from within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XIII, Section 1 of this Declaration.

**Section 4. Insurance Deductible.** The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

#### **Article IX Condemnation**

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Lots subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VIII, Section 2, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

#### **Article X Annexation of Additional Property**

Subject to the consent of the Owner thereof, and upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of the Superior Court of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

## **Article XI** **Mortgagee Provisions**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), (therefore becoming an ‘eligible holder’), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community, or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under this Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action, which would require the consent of a specified percentage of Mortgage holders.

**Section 2. No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

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

**Section 4. Amendments by Board.** Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements, which necessitate the provisions of this Article or make any such requirements less stringent, the Board, or to the extent that changes in any local, State or Federal law add mandatory requirements affecting these covenants, then without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 5. Applicability of Article XI.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

**Section 6. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association’s request.

## **Article XII** **Easements**

**Section 1. Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

### **Section 2. Easements for Use and Enjoyment.**

Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to their Lot. Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot if leased.

**Section 3. Easements for Association Maintenance.** There is hereby reserved to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 4. Easement for Entry.** The Board shall have the right, but shall not be obligated, to observe any property within the Community for emergency, security, and safety reasons. Except in an emergency situation, such observation shall only take place during reasonable hours and after notice to the Owner.

**Section 5. Easements for Entry Features and Street Signs.** There is hereby reserved to the Association an easement over and upon each Lot for ingress, egress, installation, construction, landscaping and maintenance of entry features, street signs and Community signs. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

## **Article XIII** **General Provisions**

### **Section 1. Right of Enforcement.**

#### **(a) Compliance.**

The Property shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply strictly with this Declaration, By-Laws, and any Association Rules, Regulations and Guidelines, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of this Declaration, By-Laws, and any Association Rules, Regulations and Guidelines.

Any lack of compliance shall entitle any person or persons owning any real property situated in Falcon Hills to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent him or them from so doing, or to recover

damages or other fees for such violations. The failure of any property owner to enforce promptly the provisions of these covenants shall, at no time, be considered a waiver of future rights to enforce compliance.

In addition to any rights the Association may have against an Owner's family, guests, tenants or occupants, as a result of such person's violation, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or occupants. The failure of the Association to enforce promptly the provisions of these covenants shall, at no time, be considered a waiver of future rights to enforce compliance.

The Board and its representatives shall have the right, during reasonable hours, to inspect the exterior of a property for the purpose of ascertaining whether or not the covenants, bylaws, and restrictions have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such inspection. Any improvement deemed to be nonconforming by ballot or against the Covenants, and Bylaws upon the written request of the Board, shall, at the Owner's cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. In such event, neither the Association nor the officers, directors, members, employees and agents of the Association shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Association, in the event of noncompliance with this Article, the Association may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Association shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article. Non-enforcement does not mean permission.

All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. In such event, neither the Association nor the officers, directors, members, employees and agents of the Association shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Association, in the event of noncompliance with this Article, the Association may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Association shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article. Non-enforcement does not mean permission.

**(b) Fines, Suspensions, & Notices of Non-Compliance.**

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote and/or to use the Common Property for violation of any duty imposed under this Declaration, By-Laws, or any Association Rules, Regulations and Guidelines. To the extent any assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after becoming due, the Owner's and Occupant's rights to vote and use the Common Property shall be automatically suspended until all amounts owed are paid in full.

However, nothing herein shall authorize the Association or the Board of Directors to deny ingress and egress to or from a Lot. The Association shall also have the right to record a Notice of Non-Compliance on the County records regarding any outstanding violations of the Declaration, By-Laws, or any Association Rules, Regulations and Guidelines.

**(c) Application to Owner and Occupant.**

If any Occupant of a Lot violates this Declaration, By-Laws, or any Association Rules, Regulations and Guidelines, any suspensions may be imposed against the Owner and/or Occupant. The failure of the Board to enforce any provision of this Declaration, By-Laws, or any Association Rules, Regulations and Guidelines shall not be deemed a waiver of the right of the Board to do so thereafter.

**(d) Failure of Enforcement.**

Notwithstanding the above, no right of action shall exist against the Association for failure of enforcement where: (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action therefore at law or in equity and has filed to do so.

**(e) Costs and Attorney Fees for Enforcement.**

In any enforcement action taken by the Association, including the abatement of any violation, the Association shall be entitled to any costs incurred against an Owner and/or Occupant, including reasonable attorney's fees actually incurred, whether or not a legal proceeding in law or equity is filed in connection with the violation, shall constitute a specific assessment against the Lot.

**Section 2. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Properties perpetually to the extent provided for in the Act.

**Section 3. Amendment.** This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3rds) of the Total Association Vote. "Total Association Vote" means all of the votes attributable to Permanent Members and Permanent Recreational Members of the Association, but does not include those Lot Owners who have had their right to vote suspended pursuant to this Declaration. For purposes of amending this Declaration, the term Total Association Vote shall not include the Permanent Recreational Members if the amendment is regarding a use restriction or architectural provision. The Board may amend the Declaration without a vote of the Owners in order to comply with requirements of federal, state, or local law, including, but not limited to FHA regulations.

If legal action is not instituted to challenge the validity of any amendment to this Declaration (including this restated amendment) within one (1) year of the recording thereof in the County land records, then any such amendment shall be presumed to be validly approved and adopted. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance, hereby agrees that this Declaration may be amended as provided for in this Section.

**Section 4. Partition.** The Common Property shall remain undivided, and no Lot Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

**Section 5. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 6. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**Section 7. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**Section 8. Preparer.** This Declaration was prepared by Michael Rome, Esq. of Rome & Associates, P.C., 707 Whitlock Ave., Suite E-15, Marietta, Georgia 30064.

**Section 9. Indemnification.** In accordance with the Georgia Nonprofit Corporation Code and to the full extent allowed, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director, officer, or committee member of the Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances.

**Section 10. Books and Records.**

**(a) Inspection by Members and Mortgagees.**

Books and records of the Association may be inspected and copied pursuant to the provisions of Section 14-3-1602 of the Georgia Nonprofit Corporation Act by any member of the Association or by their duly appointed representative, and by holders, insurers, or guarantors of any first Mortgage.

**(b) Rules for Inspection by Members and Mortgagees.**

The Board shall establish reasonable rules with respect to:

- (i) the written notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.

**(c) Inspection by Directors.**

Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

**(d) Privileged Documents.**

Privileged documents, such as communications between the Association's counsel and the Board, or any documents sealed by order of a court, shall not be subject to inspection by the Association members. It shall be a breach of duty on the part of a Director to release any privileged documents or copies of privileged documents to members of the Association, or any other person, without written permission of the full Board.

**Section 11. Audit of Financial Records.** At the annual or a specially called meeting, the Owners by a majority of the Total Association Vote, may require that the financial records of the Association be audited as a common expense by a certified public accountant. The Board of Directors may at any time, and without a vote of the Owners, require an audit or review of the Association's financial records to be paid as a common expense, whether or not the estimated expense of doing so was contained within an annual budget.

**Section 12. Notice of Sale.** In the event an Owner sells or otherwise transfers title to his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or transferee of the Lot and such other information as the Board may reasonably require.

**Section 13. Agreements.** All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 14. Variances.** Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of the Community, and the Variance is given in a dated writing.

**Section 15. Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege. The failure of the Association to enforce promptly the provisions of these covenants shall, at no time, be considered a waiver of future rights to enforce compliance.

**Section 16. Dispute Resolution and Limitations on Litigation.**

***A. Agreement to Avoid Litigation.***

The Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Community, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in paragraph "B." below ("Claims") shall in lieu of filing suit in any court be resolved using the procedures set forth in **Exhibit "B"** as attached hereto and incorporated herein.

***B. Claims.***

Unless specifically exempted below, all claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Community shall be subject to the procedures contained in **Exhibit "B"**.

Notwithstanding the above, unless all parties otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this Section:

- i. Any suit by the Association against any Bound Party to enforce the provisions of Article IV (Assessments);
- ii. Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of **Article VII** (Use Restrictions and Regulations) or any related rules, regulations or guidelines;
- iii. Any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- iv. Any suit in which any indispensable party is not a Bound Party; and
- v. Any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by this Section.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in this Section.



**Section 17. Security.**

Notwithstanding any privacy walls, fences, entry gates, or camera surveillance serving the subdivision/property, the association makes no representations or warranties with regard to the efficacy of such structures from a safety or security standpoint or that such structures may not be compromised or circumvented. Each owner, for himself or herself and his or her tenants, guests, licensees, and invitees, as applicable, acknowledges and understands that the association is not a provider of security and shall not have a duty to provide security on the property. It shall be the responsibility of each owner to protect his or her person and property and all responsibility to provide security shall lie solely with each owner. Each owner, tenant, occupant, guest and invitee assume all risks of personal injury and property damage and further acknowledges and agrees that the association has made no such representations or warranties, nor has any owner, tenant, occupant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for a particular purpose, relative to any safety or security measures implemented or approved. The association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Furthermore, the association does not guarantee that non-owners and non-occupants will not gain access to the property and commit criminal acts, nor that criminal acts at the subdivision/property will not be committed by other owners or occupants.

**Section 18. Conflicts & Order of Law.** If there are conflicts or inconsistencies between the provisions of the Act, other Georgia law, the Articles of Incorporation, this Declaration and the Bylaws, then the Act, other Georgia law, the Articles of Incorporation, this Declaration and the Bylaws (in that order) shall prevail. Invalidation of any one of these covenants or any part thereof by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

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IN WITNESS WHEREOF, the foregoing Amendment is executed by the undersigned duly authorized representatives of the Association on the date indicated below, and said representatives certify that after any duly required notice, the Amendment was passed by the signed consent of at least sixty-six and two-thirds (66-2/3%) percent of the total eligible vote of the Permanent Members. The individual agreement instruments (written consents) are maintained in the corporate records of the Association.

FALCON HILLS HOMEOWNERS AND RECREATION ASSOCIATION, INC.

*Sworn to, signed and sealed before us on this \_\_\_ day of \_\_\_\_\_, 20\_\_*

By: (Signature) \_\_\_\_\_  
President

\_\_\_\_\_  
WITNESS

ATTESTED TO:

(Signature): \_\_\_\_\_  
Secretary

\_\_\_\_\_  
NOTARY

[SEAL]

Prepared By:  
Michael Rome, Esq.  
GA Bar #: 613945

## EXHIBIT "A"

### LEASING RESTRICTIONS

**Leasing Restrictions.** In order to preserve the character of Falcon Hills subdivision as predominantly owner-occupied and thus protect the value of Lots within the community, and ensure that Lots qualify for eligibility of mortgage financing insofar as the criteria is based upon percentage of owner-occupied Lots, the leasing of Lots is prohibited except for (1) a Grandfathered Owner or (2) an Owner who has received a written Leasing Permit or Hardship Leasing Permit from the Board as provided in this Section or (3) the Association for any Lots owned by the Association. The Board shall have the power to make reasonable rules and regulations in order to further clarify and enforce the provisions of this Section, in addition to establishing a reasonable processing fee for requests to approve leasing, an annual administrative fee, and the right to impose fines for violations, all of which will also constitute a specific assessment and lien upon the Lot being leased.

**(a) DEFINITIONS.**

(i) **"Assessments"** as used in this Article shall include all assessments as described and contained in Article IV of this Declaration.

(ii) **"Authorized Corporate Occupant"** shall be an officer, director, shareholder, member or employee of an Owner that is a corporation; a manager or member of an Owner that is a limited liability company; a partner of an Owner that is a partnership; or a trustee or beneficiary of an Owner that is a trust; provided the Owner receives no rent or other consideration for such occupancy. The name of each Authorized Corporate Occupant shall be provided to the Board in a sworn affidavit that includes the Occupant's relationship to the owner, and the designated Authorized Corporate Occupant may not be changed more frequently than once every 12 months without the Board's written consent. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the entity holding record title to the Lot. Occupancy of an entity-owned Lot by any person that does not qualify as an Authorized Corporate Occupant hereunder shall be unauthorized and shall be deemed to constitute leasing under this Section.

(iii) **"Effective Date"** the date on which this Amendment is recorded in the County Records.

(iv) **"Grandfathered Owner"** means an Owner of a Lot who owns their Lot on the Effective Date. A Grandfathered Owner shall notify the Board when they lease their Lot, and shall provide the name of the tenants, along with the mailing address for the Owner. A Grandfathered Owner shall begin or continue to rent out the property multiple times until the date the Grandfathered Owner sells the title to the Grandfathered Lot, other than to the Owner's Spouse. No Grandfathered Owner may lease until the property is in compliance with all Covenants, By-Laws, Guidelines, and Regulations or Rules of the Association, including timely payment of any Assessments fines, or other charges to the Association.

(v) **"Leasing"** for the purposes of this Declaration is defined as the occupancy of a Lot by any person(s) other than (1) the Owner or a child, parent, grandparent, spouse or former spouse of an Owner, which relationship shall be demonstrated to the Board on request by providing a copy of a birth certificate or similar document satisfactory to the Board or (2) an Authorized Corporate Occupant or (3) a roommate of any of the preceding persons, but shall be limited to a total of one roommate or couple. *Short term rentals, including rentals through online services such as VRBO and Airbnb are strictly prohibited.*

**(b) LEASING CAP & PERMIT.** Owners who want to lease their lots may do so only if they have applied for and received from the Board either a "Leasing Permit" or a "Hardship Leasing Permit". **In order to qualify for a Leasing Permit, the Owner must first reside at the Lot for at least a twelve (12) month period.**

The Board may establish conditions as to the duration and use of such permits consistent with this Section. The Board may refuse to issue any Leasing Permit or Hardship Leasing Permit if the Owner

is shown on the Association's books and records to be delinquent in any assessment or charge or if the Owner is in violation of the Declaration, Bylaws or Association rules.

An Owner's request for a Leasing Permit shall be approved if the number of current, outstanding permits issued plus Grandfathered Owners then leasing is less than **seven percent (7%)** of the total Lots in Falcon Hills. An Owner, other than a Grandfathered Owner, may only lease one Lot at any given time. Leasing Permits are automatically revoked upon the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse). All Leasing Permits and Hardship Leasing Permits shall be valid only as to a specific Owner and Lot, and shall not be transferable between either Lots or Owners, including subsequent Owners of a Lot.

If the number of current Leasing Permits issued plus Grandfathered Owners then leasing is more than seven percent (7%) of the total number of Lots, then no additional Leasing Permits shall be issued, except for Hardship Leasing Permits, until that number falls below seven percent (7%). Owners who have been denied a Leasing Permit because the Leasing Cap is satisfied shall be placed on a waiting list to be issued such a permit, if they so desire, when the above conditions have been satisfied. Grandfathered Owners do not have to be placed on a waiting list, if otherwise qualified to lease as provided above.

The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

**(c) HARDSHIP LEASING PERMITS.** If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the number of Hardship Leasing Permits which have been issued to other Owners, (iii) the Owner's ability to cure the hardship, and (iv) whether previous Hardship Leasing Permits have been issued to this Owner. The Board shall not consider any hardship that pre-exists the Owner's purchase of their Lot.

The Board may promulgate and/or amend regulations to serve as guidelines for circumstances constituting a basis for consideration of issuing a Hardship Leasing Permit. By way of illustration, and not prescription, limitation, or restriction, examples of such circumstances might be those in which:

1. The Owner has been called to active military duty.
2. Placement of the Owner in a long term care facility.
3. Placement of the Owner with a family member due to illness.
4. The Owner dies and the Lot is being administered by their estate.
5. The Owner must temporarily relocate and intends to return to reside in the Lot.
6. An Owner must relocate his residence and cannot, within a set period of time from the date the Lot was placed on the market, sell the Lot while offering it for sale at a reasonable price no greater than its current appraised market value.

Hardship Leasing Permits shall be valid for a term not to exceed one (1) year. Hardship Leasing Permits shall be automatically revoked if during the term of the permit the Owner applies for and receives a Leasing Permit. Hardship Leasing Permits shall not be renewed. Therefore, any lease signed under a Hardship Leasing Permit must contain a provision stating that the lease is not renewable.

**(d) LEASING PROVISIONS.** Leasing of Lots shall be governed by the following provisions:

**(i) Notice.** At least seven (7) days prior to entering into the lease of a unit, the owner shall provide the Board of Directors with a copy of the proposed lease, the names and addresses of the proposed lessee, and such other information as the Board may reasonably require. Within ten (10) business days after executing a lease agreement, the Owner shall provide the Board with a copy of the executed lease.

**(ii) General.** Lots may be leased only in their entirety; no rooms, basements or fractions of Lots may be leased without prior written Board approval. All leases shall be in writing. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than six (6) months, but not more than twenty-four (24) months. The Owner must provide the lessee copies of the Declaration, Bylaws, and Rules and Regulations of the Association.

Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

**(iii) Required Provisions.** Each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Lot, agrees to the applicability of this covenant, and incorporation of the following language into the lease:

**Compliance with the Governing Documents and Enforcement Powers of the Association.**

If a Lot is leased or occupied in violation of this Section, the Association may bring an action against the lessee and/or the Owner for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or in equity. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

The Lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations of the Association, and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance, and shall indemnify and hold the Association harmless for any such person's failure to comply. The Owner shall cause all occupants of the Lot to comply with the Declaration, Bylaws, Architectural Standards and the rules and regulations, and shall be responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are also liable for any such violation or loss. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, Architectural Standards or a rule and regulation of the Association, fines may be levied against the lessee and/or the Owner; and such a violation is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability, and to evict the lessee in accordance with Georgia law. The Owner and Lessee hereby further agree to hold harmless the Association, its Board of Directors, employees and agents if the Association exercises any of the enforcement power granted in this Section.

**(e) RIGHTS OF FIRST MORTGAGEES.** Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not impair the right of any first Mortgagee to:

- (i) foreclose or take title to the Lot pursuant to remedies contained in any Mortgage;
- (ii) take a deed or assignment in lieu of foreclosure; or
- (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

**(f) AMENDMENTS TO CONFORM WITH LAWS.** The Board may amend this Section of the Declaration without a vote of the Owners in order to comply with requirements of federal, state, or local law.

## EXHIBIT "B"

### Mandatory Procedures for Dispute Resolution

**(a) Notice.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (i) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) Claimant's proposed resolution or remedy; and
- (iv) That Claimant's desire to meet with Respondent to discuss in good faith ways to resolve the Claim.

**(b) Negotiation.** The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

**(c) Mediation.** If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties), Claimant shall have 30 additional days to submit the Claim to mediation to an independent agency providing dispute resolution services in the Cobb County area. Each Bound Party shall present the mediator with a summary of the Claim prior to the mediation session.

If Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date mediation was terminated ("Termination of Mediation"). Except as provided below in subparagraph (d), the Claimant shall then be entitled to file suit or initiate administrative proceedings on the Claim as appropriate.

Each Bound Party shall bear its own costs of mediation and each Party shall share equally all fees charged by the mediator.

**(d) Final and Binding Arbitration.** If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Official Code of Georgia Annotated, Section 9-9-1, et seq. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

This subsection (d) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Georgia. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Georgia. Each Bound Party shall bear its own costs and each Party shall share equally all fees charged by the arbitrator.

**(e) Allocation of Costs of Resolving Claims.** Subject to subparagraph (d) above, each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

Any award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

**(f) Enforcement of Resolution.** After resolution of any Claim, if any party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees actually incurred, and court costs.