

371

8.8. Date of Commencement of Assessments.

The obligation to pay assessments shall commence as to each Unit on the first day of the month following the later of: (a) the month in which the Board shall establish the Common Expense budget and levy assessments, or (b) date upon which the Unit is conveyed or transferred from Declarant to an Owner for residential occupancy. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.9. Failure to Assess.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.10. Exempt Property.

In addition to those units not subject to assessment under Section 8.8, the following property shall be exempt from payment of assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

**Article IX Architectural Standards**

9.1. General.

No structure or thing shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, other site work, exterior alteration of existing improvements, painting or modifying fences, and planting or removal of landscaping materials) shall take place except in compliance with this Article. Any Owner may remodel, paint, or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of Declarant or the Association.

372

All dwellings constructed on Units shall be four sides masonry or brick; however, if hardiplank should be utilized in the exterior design of the dwelling, a masonry skirt shall be required 24 inches above the ground.

9.2. Architectural Review.

(a) By Declarant. Until 100% of the Units anticipated under the Land Plan have been developed and conveyed to Owners other than Declarant and contain dwellings for which certificates of occupancy have been issued, Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for original construction within the Community. There shall be no surrender of this right prior to that time except by a written instrument specifically assigning all or a portion of such right in Recordable form executed by Declarant.

(b) Architectural Review Committee. Upon the expiration or assignment of all or a portion of Declarant's authority to control architectural review for all or a portion of the Community, the Board shall create and appoint an Architectural Review Committee ("ARC"). The ARC shall consist of at least three, but not more than five, persons who shall serve and may be removed in the Board's discretion; provided, as long as Declarant owns any property described on Exhibit "A" or "B," it shall be entitled to appoint one member. The ARC shall have no rights or authority until Declarant's authority expires or is assigned. At such time, the ARC shall have authority over modifications, additions, or alterations made on or to existing structures on Units. At any time during the review process, Declarant shall have the right to veto any action taken by the ARC so long as it owns any property described in Exhibit "A."

All new construction or modifications shall be reviewed, and the reviewing body may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

9.3. Standards and Procedures.

(a) Standards. Declarant may prepare architectural standards or design guidelines ("Standards") which shall apply to all construction activities within the Community. Declarant shall have sole and full authority to amend the Standards as long as it owns any portion of the Community or has the right to annex additional property in accordance with Section 7.1. Thereafter, the ARC shall have the authority to amend the Standards with the consent of the Board. The Standards are intended to provide guidance to Owners regarding matters of particular concern in considering applications, and all structures and improvements shall be constructed in strict compliance with the Standards, unless the reviewing body has granted a variance in writing.



373

(b) Procedures. Prior to commencing any activity subject to review, an Owner shall submit an application for approval of the proposed work to the appropriate reviewing body. Such application shall be in the form required by the reviewing body and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction, as applicable. Before the Owner may begin the proposed activity, the application must be approved in accordance with the procedures described below.

In reviewing each submission, the reviewing body may consider whatever factors it deems relevant, including visual and harmony of external design with surrounding structures and environment. The reviewing body may require relocation of native plants within the construction site, screening, and landscaping as a condition of approval of any submission.

The reviewing body shall respond in writing to an application within 30 days at an address specified by such party at the time of submission. The response may (i) approve the application, (ii) approve portions, segments, or features of the Plans, and disapprove other portions, segments, or features, or (iii) disapprove an application which is deemed to be inconsistent or not in conformity with this Declaration and/or the Standards. The reviewing body may, but shall not be obligated to, set forth the reasons for such finding, and it may make suggestions to cure objections to an application. In the event the reviewing body fails to respond in a timely manner, approval shall be deemed to have been given; provided, no construction which is inconsistent with the Standards shall be deemed approved unless a written variance has been issued. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

If construction does not commence on a project which has been approved within 120 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval. If construction is not completed on a project for which plans have been approved within the period set forth in the Standards or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

#### 9.4. No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications will change from time to time and that interpretation, application, and enforcement of the Standards may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

374

#### 9.5. Variance.

Declarant or the ARC may authorize variances, in writing, from the Standards or its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship, or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Owners acknowledge and understand the ARC has no power or authority to grant variances to any Henry County zoning requirements.

#### 9.6. Limitation of Liability.

The requirements and procedures established by this Article are intended to enhance the overall aesthetics of the Community and shall not create any duty to any Person. Declarant, the Board, or the ARC shall not bear any responsibility for (i) ensuring the structural integrity or soundness of approved construction or modifications, (ii) for ensuring compliance with building codes and other governmental requirements, or (iii) for ensuring the appropriateness of soils, drainage, and general site work. Neither Declarant, the Association, the Board, the ARC, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the Association shall defend and indemnify the ARC and its members.

#### 9.7. Enforcement.

Any structure, thing, or improvement placed or made in violation of this Article or the Standards shall be deemed to be nonconforming, unless a variance has been granted. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant or the Board shall have the right to Record a notice of violation and to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the Owner and Unit and collected as a Specific Assessment.

Unless otherwise specified in writing by the body granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and its Owner as a Specific Assessment.



375

The Board may exclude from the Community any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Standards, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the reviewing bodies.

#### **Article X Use Restrictions and Rules**

##### **10.1. Plan of Development; Applicability; Effect.**

Declarant has established a general plan of development for the Community in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Community, and the vitality of and sense of community, all subject to the Board's and the Members' ability to respond to changes in technology, needs and desires, and to regulate and control the Area of Common Responsibility. The initial Use Restrictions and Rules attached as Exhibit "C," establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests, and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

##### **10.2. Authority to Promulgate Use Restrictions and Rules.**

The initial Use Restrictions and Rules may be modified in whole or in part, repealed, or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Members representing at least 51% of the total Class "A" votes and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

376

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules previously adopted by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the new Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

#### 10.3. Owners' Acknowledgment.

All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and Recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected, that the Use Restrictions and Rules may change from time to time, and that such changed Use Restrictions and Rules may or may not be set forth in a recorded instrument.

#### 10.4. Rights of Owners.

Except as may be specifically set forth in this Declaration (either initially or by amendment), neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Signs. No signs, banners, symbols, or displays of any kind shall be displayed upon any Unit other than one sign identifying the name of the contractor during construction of a dwelling or the developer of the Community, or one "for sale" sign not to exceed four square feet in surface area. Any such sign must satisfy any design criteria set forth in the Standards and otherwise approved by the reviewing body under Section 9.2. Notwithstanding the foregoing restriction, a Mortgagee taking title to a Unit pursuant to the terms of a Mortgage, or any Person acting pursuant to a law or ordinance may place a sign on a Unit, provided that the design, color, and size of any such sign is approved by the reviewing body.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations on their Units of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside of a structure.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the



377

total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of others, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(g) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably related to the Association's costs of administering that lease or transfer.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Community.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

The limitations in this Section 10.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 15.2.

## Article XI Easements

### 11.1. Easements of Encroachment.

There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and

378

between adjacent Units due to the unintentional placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

#### 11.2. Easements for Utilities.

(a) There are hereby reserved to Declarant, (so long as Declarant owns any property described on Exhibit "A" or "B" of this Declaration), the Association (for perpetual duration), and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) non-exclusive easements upon, across, over, and under all of the Community (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining, and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways, and trails; wetlands and drainage systems; street lights and signage; and all utilities including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which Declarant or the Association owns or within easements designated for such purposes on Recorded plats of the Community.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters, and boxes, as applicable.

(b) There is hereby reserved to Declarant, so long as Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A" or "B."

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

#### 11.3. Easements for Maintenance and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement over the Community for access, ingress and egress to the detention basin located within the Community as shown on any Recorded plat of The Highlands and the detention basin or ponds, creeks, streams, and wetlands located within the Area of



379

Common Responsibility and for (a) installing, keeping, maintaining, repairing, and replacing pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) constructing, maintaining, and repairing any bulkhead, retaining wall, levee, or other structure retaining water; (c) removing trash and other debris therefrom; and (d) any other maintenance activities necessary to maintain the Community-Wide Standard. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, the Association, or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

#### 11.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.

#### 11.5. Right of Entry.

The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the Association's right to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after Board request, but shall not authorize entry into any dwelling without the Owner or occupant's permission, except by emergency personnel acting in their official capacities.

### **Article XII Mortgage Provisions**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Community.

#### 12.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or

380

guarantor and the street address of the Unit to which its Mortgage relates, thereby 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 Unit 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 a Unit, subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

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

#### 12.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

#### 12.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

#### 12.4. 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 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

### Article XIII Declarant's Rights

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly Recorded.



381

Declarant and builders authorized by Declarant may maintain and carry or without fee or charge upon portions of the Common Area such facilities and activities as, in Declarant's opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and authorized builders shall have easements for access to and use of such facilities.

Declarant and its employees, agents, and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

No Person shall Record any declaration of covenants, conditions, and restrictions; or declaration of condominium; or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by Declarant and Recorded.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules, architectural standard, or design guideline or attempted after termination of the Class "B" Control Period shall be effective without prior notice to and written approval of Declarant so long as Declarant owns any portion of the Community primarily for development and sale.

This Article may not be amended without Declarant's written consent. The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) upon Recording by Declarant of a written statement that all sales activity has ceased.

#### **Article XIV Dispute Resolution and Limitation on Litigation**

##### **14.1. Agreement to Avoid Litigation.**

Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any builder, 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 Sections 14.2 ("Claims") shall be resolved using the procedures set forth in Section 14.3 in lieu of filing suit in any court.

##### **14.2. 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; the rights, obligations, and duties of any Bound Party under the Governing Documents; or relating to

382

the design or construction of improvements within the Community shall be subject to the provisions of Section 14.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 14.3:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);

(b) any suit by the Association to obtain a temporary restraining order (or other 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 IX (Architectural Standards) and Article X (Use Restrictions and Rules);

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.3(a).

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 14.3.

#### 14.3. Mandatory Procedures.

(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 remedy; and
- (iv) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.



383

(i) 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.

(ii) 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) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of the Neighborhood Justice Center of Atlanta or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Henry County area.

(iii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for 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.

(iv) 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 ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

#### 14.4. Allocation of Costs of Resolving Claims.

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).

#### 14.5. Enforcement of Resolution.

After resolution of any Claim, if any Party fails to abide by the terms of any agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 14.3. In such event, the Party taking action to enforce the agreement 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, including, without limitation, attorneys' fees and court costs.

### Article XV **General Provisions**

#### 15.1. Duration.

This Declaration, as it may be amended, is intended to remain in effect in perpetuity. However, so long as Georgia law limits the period during which covenants may run with the

384

land, this Declaration shall run with and bind the Community so long as permitted. After such time, this Declaration shall be extended automatically for successive 20-year periods, unless terminated in accordance with O.C.G.A. §44-5-60, as may be amended, within the year preceding any extension. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

15.2. Amendment.

This Declaration may be amended as provided in this section. Amendments to this Declaration shall become effective upon Recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(a) By Declarant. During the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, so long as Declarant owns any property described in Exhibit "A," it may unilaterally amend this Declaration to (i) bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) enable any title insurance company to issue title insurance coverage; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans; or (iv) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans; provided, any such amendment shall not materially adversely affect the title to any Owner's Unit unless any such Unit Owner shall consent thereto in writing.

(b) By the Owners. This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Units and the consent of Declarant (so long as Declarant owns any of the property described in Exhibit "A").

(c) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Owners to submit the Association to the Georgia Property Owners' Association Act and to conform this Declaration to any mandatory provisions thereof. Any such amendment shall require the consent of Declarant, so long as Declarant owns any of the property described in Exhibit "A" or "B."

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.



385

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

15.3. Severability.

Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4. Litigation.

Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VII; (c) proceedings involving challenges to ad valorem taxation; or (d) counter-claims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIV, if applicable.

15.5. Cumulative Effect; Conflict.

The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other Recorded declaration, covenants, and restrictions applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6. Compliance.

Every Owner and occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By-Laws, and the Use Restrictions and Rules promulgated pursuant to Article X. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

386

15.7. Notice of Sale or Transfer of Title.

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the successor Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.8. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 15.2. Exhibit "C" is incorporated by this reference and may be amended in accordance with Section 15.2 or Article X. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

{SIGNATURES ON FOLLOWING PAGE}



387

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 2 day of ~~August~~ August, 2006

DECLARANT: SHAWSHANK, LTD., a Georgia corporation

By:  
Its:

*[Handwritten signature]*

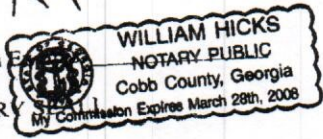
[CORPORATE SEAL]

Signed, sealed, and delivered, ~~2006~~  
this 2<sup>ND</sup> day of August, 2006,  
in the presence of:

Shawn Patterson  
Witness

[Signature]  
Notary Public

My Commission Expires



[AFFIX NOTARY SEAL]

G:\ADT\Clients\Jones, Carl

DCCRs-

482503.doc