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CROSS REFERENCES:
Book 1429, Page 240
Book 4901, Page 107
Book 6002, Page 77

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CLEARWATER AT LAKE ARROWHEAD
(PODS F, G, H, AND I)**



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CLEARWATER AT LAKE ARROWHEAD
(PODS F, G, H, AND I)**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CLEARWATER AT LAKE ARROWHEAD ("Clearwater Declaration") is made this 20th day of July, 2016 by PURCELL CO., INC., a Delaware corporation (formerly Diamondhead Corporation) ("Purcell") and 2012 MIFP, LLC, a Texas limited liability company ("MIFP"). Any reference in collateral documentation referring to the "CC&Rs" for Clearwater at Lake Arrowhead shall refer to this Clearwater Declaration. This Clearwater Declaration is part of a general plan to protect and enhance the value and desirability of all property now or hereafter subject hereto.

PREAMBLE:

WHEREAS, Purcell recorded that certain Declaration of Covenants, Conditions and Restrictions for Lake Arrowhead dated March 31, 1993, in Deed Book 1429, Page 240, Cherokee County, Georgia Records ("Declaration"), as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Lake Arrowhead dated November 30, 2001, recorded in Deed Book 4901, Page 107, Cherokee County, Georgia Records ("First Amendment") (as vacated under Civil Action 02-CV-0819), and as further amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions for Lake Arrowhead dated February 26, 2003, recorded in Deed Book 6002, Page 77, Cherokee County, Georgia Records ("Second Amendment") (collectively, such Declaration, First Amendment and Second Amendment are referred to in this Clearwater Declaration as the "Master Declaration");

WHEREAS, pursuant to the provisions of Article IX, Section 1 of the Master Declaration, Purcell, as the "Declarant" under the Master Declaration, has the authority and right to subject other real property to the Master Declaration to be developed as part of the community known as "Lake Arrowhead," as defined in the Master Declaration, by filing for record a supplemental declaration with respect to the real property to be then subjected to the Master Declaration ("Supplemental Declaration to the Master Declaration");

WHEREAS, pursuant to the provisions of Article IX, Section 2 of the Master Declaration, Purcell, as the "Declarant" under the Master Declaration, has the authority and right to subject other real property developed as part of the community known as "Lake Arrowhead," as defined in the Master Declaration, to other declarations of covenants and restrictions ("Other Declaration");

WHEREAS, pursuant to the provisions of Article IX, Section 3 of the Master Declaration, any such Supplemental Declaration to the Master Declaration or Other Declaration may contain modifications to the covenants and restrictions set forth in the Master Declaration and such additional provisions as may be necessary to reflect the different character of the property subjected to such Supplemental Declaration to the Master Declaration or Other Declaration;

WHEREAS, MIFP is the owner of the real property described in Exhibit "A" attached to this Clearwater Declaration (the "Clearwater Property");

WHEREAS, in accordance with the provisions of Article IX of the Master Declaration, Purcell and MIFP desire to: (A) subject the Clearwater Property to the provisions of the Master Declaration, as modified in this Clearwater Declaration; and (B) establish an additional declaration to control and govern the development and use of the Clearwater Property; and

NOW THEREFORE, pursuant to the powers retained by Purcell in Article IX, Sections 1, 2 and 3 of the Master Declaration, and in accordance with the provisions set forth in said Sections, Purcell, as "Declarant" under the Master Declaration, hereby takes the following actions:

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20255:Declaration of Covenants - Clearwater at Lake Arrowhead (Pods FGH) 7-18-16 Clean

1. Annexation. As set forth in Article IX, Section 1 of the Master Declaration, with the consent of MIFP, Purcell hereby subjects the Clearwater Property to the provisions of the Master Declaration, subject to such modifications and alterations as set forth in this Clearwater Declaration. This Clearwater Declaration shall serve as the "Supplemental Declaration" contemplated in Article IX, Section 1 of the Master Declaration. The Clearwater Property shall be sold, transferred, used, conveyed, occupied and encumbered pursuant to the provisions of the Master Declaration (subject to such modifications and alterations as set forth in this Clearwater Declaration), all of which shall run with the title to said Clearwater Property and shall be binding upon all persons having any right, title or interest in said Clearwater Property, and their respective heirs, legal representatives, successors, successors-in-title and assigns.

2. Other Declaration. As set forth in Article IX, Sections 2 and 3 of the Master Declaration, Purcell and MIFP hereby subject the Clearwater Property to the provisions of this Clearwater Declaration, which Clearwater Declaration contains modifications to the covenants and restrictions set forth in the Master Declaration and such additional provisions that reflect the different character of the Clearwater Property. The Clearwater Property shall be sold, transferred, used, conveyed, occupied and encumbered pursuant to the provisions of this Clearwater Declaration, all of which shall run with the title to said Clearwater Property and shall be binding upon all persons having any right, title or interest in said Clearwater Property, and their respective heirs, legal representatives, successors, successors-in-title and assigns.

3. LAYCC Membership Fee.

3.1 Initiation Fee Payable to the Lake Arrowhead Yacht & Country Club, Inc. In accordance with Article III of the Master Declaration, subject to such modifications and alterations as set forth in this Clearwater Declaration, each Owner, by accepting title to a Lot, covenants and agrees to pay the Lake Arrowhead Yacht & Country Club, Inc. ("LAYCC") an initiation fee for membership in the LAYCC and the privilege to use and enjoy the Club ("LAYCC Initiation Fee"). The LAYCC Initiation Fee payable by Owners subject to this Clearwater Declaration shall be identical to the initiation fee payable to the LAYCC by the owners of lots (which shall include a "Lot" and an "Improved Lot" as such terms are defined in the Master Declaration) that are subject to that certain Declaration Covenants, Conditions and Restrictions for Lake Arrowhead – Phase II dated November 9, 2007 and recorded in Deed Book 9937, Page 1, Cherokee County, Georgia Records, as amended and/or supplemented from time to time (the "Phase II Lots").

3.2 Annual Assessment Payable to the Lake Arrowhead Yacht & Country Club, Inc. In accordance with Article IV of the Master Declaration, subject to such modifications and alterations as set forth in this Clearwater Declaration, each Owner, by accepting title to a Lot, covenants and agrees to pay the LAYCC annual assessment ("LAYCC Annual Assessment"). The LAYCC Annual Assessment payable by Owners subject to this Clearwater Declaration shall be identical to the annual assessment payable to the LAYCC by the owners of the Phase II Lots.

3.3 The LAYCC Membership Fee. The LAYCC Initiation Fee, the LAYCC Annual Assessment, and any related charges payable to the LAYCC collectively shall be referred to in this Clearwater Declaration as the "LAYCC Membership Fee". Notwithstanding anything to the contrary set forth in the Master Declaration or this Clearwater Declaration, the LAYCC Membership Fee payable by the Owners subject to this Clearwater Declaration shall be identical to the LAYCC Membership Fee payable by the owners of the Phase II Lots. Moreover, in the event that the Master Declaration is amended to require the payment of any modified assessments, additional assessments, charges and/or fees to the LAYCC, Lake Arrowhead Property Owners Association, Inc., a Georgia corporation ("LAPOA") or any third party, such modified assessments, additional assessments, charges and/or fees payable to the LAYCC, LAPOA or any third party under the Master Declaration by the Owners subject to this Clearwater Declaration shall be identical to those modified assessments, additional assessments, charges and/or fees payable by Owners of the Phase II Lots. Subject to Section 3.4, Section 3.5, Section 3.6 and Section 4.3 below, each Owner, by accepting title to a Lot, is deemed to covenant and agree to pay the LAYCC Membership Fee in a timely manner and in accordance with the Master Declaration and the Membership Plan for Lake Arrowhead Yacht & Country Club, Inc. ("LAYCC Membership Plan"). The obligation to pay the LAYCC Membership Fee shall be mandatory and shall be a separate and independent covenant on the part of each Owner of a Lot. No Owner may exempt himself or herself from liability for the LAYCC Membership Fee by non-use of the Club, abandonment of Owner's Lot, or any other means. No diminution or abatement of the LAYCC Membership

Fee or set-off shall be claimed or allowed for any alleged failure of the LAYCC to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes. Furthermore, the sale or transfer of any Lot shall not affect the recorded lien nor relieve such Lot from the lien for any subsequent LAYCC Membership Fee. However, the sale or transfer of any Lot pursuant to foreclosure of the first mortgage shall extinguish the lien as to any LAYCC Membership Fee due prior to the mortgagee's foreclosure.

3.4 Lot Consolidation Provisions. The provisions of Article VI, Section 2 of the Master Declaration specifically allowing the designation of multiple, contiguous Lots as one Lot for purposes of the LAYCC Initiation Fee and the LAYCC Annual Assessment shall be applicable to the Clearwater Property, with such designation to be at the discretion of MIFP.

3.5 Multiple Lot Initiation Fee Exemption. The provisions of Article III, Section 3 of the Master Declaration allowing any Person owning multiple Lots for purchase directly from Declarant to pay a single LAYCC Initiation Fee on one (1) such Lot shall be applicable to the Clearwater Property.

3.6 Multiple Lot Assessment Exemption. The provisions of Article IV, Section 4 of the Master Declaration allowing Declarant to stipulate and agree that any Person owning more than one (1) Lot purchased directly from Declarant may, for so long as the Person owns such Lots, be exempt from paying assessments on all but one (1) of such Lots for a period not to exceed thirty-six (36) months shall be applicable to the Clearwater Property.

4. Membership/Duration of Membership. Notwithstanding anything to the contrary contained in the Master Declaration and subject to Section 3.4, Section 3.5, and Section 3.6 above and Section 4.3 below, upon payment of the LAYCC Initiation Fee, Purcell or LAYCC shall issue to the Owner(s) of each Lot that is subject to this Clearwater Declaration a "Resident" membership in the "Community" use category consisting of those licenses and privileges as set forth in the LAYCC Membership Plan. Only one (1) "Resident" membership in the "Community" use category shall be issued per Lot. If more than one (1) person holds title to the Lot, the membership will be issued to all co-Owners jointly, provided that such co-Owners shall designate one (1) individual as the authorized member.

All privileges of "Resident" membership shall be limited to operating hours and subject to payment of LAYCC Membership Fee. Such privileges shall also be subject to such LAYCC Membership Plan and any policies and rules as the LAYCC may establish and modify from time to time ("LAYCC Policies"); provided, however, the LAYCC Membership Plan and LAYCC Policies that are available and applicable to the Owners of Lots subject to this Clearwater Declaration shall be the same as the LAYCC Membership Plan and LAYCC Policies that are available and applicable to the owners of the Phase II Lots. Nothing herein shall obligate Purcell or LAYCC to offer or maintain any service nor shall anything herein dictate the level of service or hours of operation of any service provided.

4.1 Term of Memberships; Covenant to Maintain. The Owner(s) of each Lot shall maintain the "Resident" membership issued for their Lot in good standing as long as they hold title to the Lot. Such "Resident" membership shall automatically terminate, as to the Owner(s) of each Lot, when such Owner(s) ceases to be the owner of record title to the Lot; however, the Owner(s) of each Lot shall remain liable for all charges incurred on account of such "Resident" membership prior to such termination. Upon transfer of title to a Lot and termination of the "Resident" membership held by the previous Owner, LAYCC shall issue a new "Resident" membership to the new Owner(s) upon the payment by such Owner(s) of the then applicable LAYCC Membership Fee.

4.2 No Ownership Interest. No Owner, by virtue of ownership of a Lot or by virtue of membership in the LAYCC, acquires any ownership interest, beneficial interest, or other vested interest whatsoever in the Club, but only the privilege of using and enjoying the Club as a "Resident" member in accordance with the LAYCC Membership Plan and LAYCC Policies, which are subject to change from time to time.

4.3 MIFP's Lots Excluded. The granting of a "Resident" membership and the obligation for the LAYCC Membership Fee pursuant to this Article 4 shall not apply to any Lot owned by MIFP or a Builder, while so owned.

5. Land Use Restrictions. Notwithstanding anything to the contrary contained in the Master Declaration, the construction, development and use of a Lot shall be subject to this Clearwater Declaration, and shall not be governed by the procedures and regulations set forth in Article VI of the Master Declaration; provided, however, those regulations set forth in Article VI, Sections 4, 7, 8, 9, 10, 11, 14, 25, 26, and 27 of the Master Declaration shall continue in full force and effect to the extent such Sections are not in conflict with this Clearwater Declaration, in which case this Clearwater Declaration shall control.

6. Enforcement. Notwithstanding anything to the contrary contained in the Master Declaration, violations of any restriction, conditions or covenants contained in the Master Declaration shall be subject to the enforcement procedures set forth in this Clearwater Declaration, and Declarant or its assigns shall have full rights to enforce sanctions against such violations as if such were violations hereunder.

7. Modifications and Conflicts. Pursuant to Article IX, Section 3 of the Master Declaration, Purcell and MIFP hereby subject the Clearwater Property to an "other declaration", and such "other declaration" shall be known as this Clearwater Declaration. This Clearwater Declaration hereby modifies and adds to those restrictions and covenants contained in the Master Declaration. Notwithstanding anything to the contrary contained in the Master Declaration, in the event of any conflict between the Master Declaration and this Clearwater Declaration, the provisions of this Clearwater Declaration shall control.

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CLEARWATER AT LAKE ARROWHEAD
(PODS F, G, H, AND I)**

INTRODUCTION TO THE COMMUNITY

2012 MIFP, LLC, a Texas limited liability company, as Declarant of the Community, has created this Clearwater Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of the Community as a master planned community.

ARTICLE I. CREATION OF THE COMMUNITY

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A," intends by Recording this Clearwater Declaration to establish a general plan of development for the planned community known as "Clearwater at Lake Arrowhead" consisting of residential, recreational and other areas and uses. This Clearwater Declaration provides for the Community's overall development, administration, maintenance, and preservation, and provides flexible and reasonable procedures for its future expansion. Declarant intends, without obligation, that when developed fully, the Community may include several residential neighborhoods, greenbelts, and recreational areas, including, but not limited to, open spaces, walkways, and other facilities.

An integral part of the development plan is the creation of the Clearwater at Lake Arrowhead Homeowners Association, Inc., a Georgia nonprofit corporation, to own, operate, and/or maintain amenities upon various common areas and community improvements and to administer and enforce this Clearwater Declaration and the other Governing Documents (defined hereafter) referenced in this Clearwater Declaration.

As the development of the Community proceeds, Declarant intends, without obligation, to Record various subdivision plats, to dedicate portions of the Property to the public for general public use, or to keep all or portions of the above in private ownership, and to Record Supplemental Declarations.

This Clearwater Declaration does not and is not intended to create a condominium under Georgia law.

THIS CLEARWATER DECLARATION DOES NOT AND IS NOT INTENDED TO SUBMIT THE COMMUNITY TO THE TERMS OF THE GEORGIA PROPERTY OWNERS ASSOCIATION ACT, O.C.G.A. §44-3-220, ET SEQ.

1.2. Binding Effect.

All property described in Exhibit "A," and any additional real property made subject to this Clearwater Declaration in the future by Recording one (1) or more Supplemental Declarations (as provided in Article IX of this Clearwater Declaration), shall be owned, conveyed, and used subject to this Clearwater Declaration. This Clearwater Declaration shall run with the title to such property and shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their respective

legal representatives, heirs, successors, successors-in-title, and assigns whether or not it is specifically referenced in the conveyance deed.

The covenants, restrictions and easements of this Clearwater Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by Declarant, the Association, or any Owner, their respective legal representatives, heirs, successors, and successors-in-title, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting land to certain uses may run, any provision of this Clearwater Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless fifty-one percent (51%) of the persons owning Lots execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all Owners affected by the covenant and a description of the covenant to be terminated or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting any termination must be Recorded no sooner than, but within two (2) years immediately preceding the beginning of a twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any interest (including, without limitation, a security interest) in any real property subject to this Clearwater Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Clearwater Declaration may be extended and renewed as provided in this Section.

In any event, if any provision of this Clearwater Declaration would be unlawful, void, or voidable by a law which restricts the period of time that covenants on land may be enforced, such provision shall expire twenty-one (21) years after the death of the last survivor of the now living descendants of George W. Bush. This Section shall not permit termination of any easement created in this Clearwater Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all Owners and Occupants of property within the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. The Governing Documents create a general plan of development for the Community, which may be supplemented by additional covenants, restrictions, and easements applicable to particular Lots.

The Community's Governing Documents consist of the following and shall be deemed to include all amendments and supplements thereto:

THE COMMUNITY'S GOVERNING DOCUMENTS	
Name of Documents	Purpose
Articles of Incorporation —————→ (filed with Georgia Secretary of State)	establishes the Association as a non-profit corporation under Georgia law
By-Laws —————→ (the Board of Directors adopts) (initial set attached as <u>Exhibit "C"</u> to this Clearwater Declaration)	describes the system to govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
Clearwater Declaration —————→ (Recorded in Cherokee County, Georgia)	creates obligations and rights, which are binding upon the Association and all present and future owners of property within the Community

Supplemental Declaration (Recorded upon annexation of each Parcel)	→	adds property to the Community; may impose additional obligations or restrictions applicable to the specific Parcel or create easements over the property described in the Supplemental Declaration
Design Guidelines (Declarant adopts)	→	establishes architectural and aesthetic standards, guidelines and procedures for improvements and modifications to Lots and Common Areas, including structures, landscaping, and other items on Lots
Use Restrictions (Initial set attached as <u>Exhibit "B"</u> to Declaration)	→	govern use of privately owned property and activities within the Community
Board Resolutions and Rules (Board adopts)	→	establish rules, policies, and procedures for the Association's operations; regulate operation and use of Common Area
Master Declaration (Recorded in Cherokee County, Georgia)	→	the Declaration of Covenants, Conditions and Restrictions for Lake Arrowhead

The Governing Documents may be amended from time to time, and as such, Owners are responsible for obtaining a copy of the most current Governing Documents.

Additional restrictions or provisions, which are more restrictive than the provisions of this Clearwater Declaration may be imposed on any Lot in which case, the more restrictive provisions will be controlling. However, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant's written consent, so long as Declarant owns any property within the Community. Any instrument Recorded without the required consent is void and of no force and effect.

If there are conflicts between Georgia law and the Governing Documents, Georgia law shall control. In addition, if there are any conflicts between the Master Declaration and this Clearwater Declaration, this Clearwater Declaration shall control. Moreover, if there are any conflicts between or among any of the other Governing Documents, then this Clearwater Declaration, the Articles, the By-Laws, the Design Guidelines, Use Restrictions, and the Board Resolutions and Rules (in that order) shall control.

The Governing Documents apply to all Owners and all Occupants of their Lot, as well as their respective Tenants, guests, and invitees. **Declarant shall not be subject to the obligations set forth in this Clearwater Declaration, unless specifically noted as Declarant obligations.** Any lease on a Lot shall provide that the Tenant and all Occupants of the leased Lot shall be bound by the terms of the Governing Documents and shall be responsible for compliance with such terms by their guests and invitees.

Unless otherwise specifically provided, any notice provided for in the Governing Documents shall be provided in accordance with the By-Laws.

If any judgment or court order should determine that any provision of this Clearwater Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

All diagrams, which are included in the Governing Documents, are intended only to summarize the express written terms therein. **Diagrams are not intended to supplant or supplement the express written or implied terms contained in the Governing Documents.**

ARTICLE II. DEFINITIONS

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as follows:

2.1. **"Architectural Review Committee" or "ARC"**: The committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce the Design Guidelines, as described in Article IV, which shall be the Declarant until the Board of Directors appoints a separate Architectural Review Committee, as provided in Section 4.2 below.

2.2. **"Articles" or "Article of Incorporation"**: The Association's Articles of Incorporation, filed with the Georgia Secretary of State, as they may be amended from time to time.

2.3. **"Assessment" or "Assessments"**: Any Base Assessment, Benefited Assessment, Special Assessment, maintenance charges, use fees, or any other fees, fines or charges made or assessed hereunder by the Association against an Owner and Owner's Lot in accordance with the provisions of Section 8.1 below. The terms "Assessment," as used in this Clearwater Declaration, shall not include the LAYCC Membership Fee payable to LAYCC and/or any other assessments, charges or fees levied by and payable to LAPOA.

2.4. **"Assessment Lien"**: A lien that is created or imposed as set forth in Section 8.7.

2.5. **"Assessable Property"**: Property that is either a Lot or a Parcel in the Community, excluding any Exempt Property.

2.6. **"Association"**: Clearwater at Lake Arrowhead Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

2.7. **"Base Assessment"**: Assessments levied by the Association on an annual basis to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1.

2.8. **"Benefited Assessment"**: Assessments levied by the Association against a particular Lot or particular Lots for Association expenses, as described in Section 8.4.

2.9. **"Board of Directors" or "Board"**: The body responsible for the Association's general governance and administration, selected as provided in the By-Laws.

2.10. **"Bound Parties"**: Shall have the same meaning as set forth in Section 14.1(a).

2.11. **"Builder"**: Any Person who purchases one (1) or more Lots for the purpose of constructing Improvements thereon for later sale to consumers or who purchases one (1) or more parcels of land within the Community for further subdivision, development, and/or resale in the ordinary course of such Person's business or who enters into a construction contract with an Owner of a Lot for the construction of a residential dwelling. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers. Notwithstanding anything to the contrary stated in this Clearwater Declaration, all Builders must be approved by Declarant.

2.12. **"By-Laws"**: The Association's By-Laws, as they may be amended from time to time. A copy of the initial By-Laws is attached to this Clearwater Declaration as Exhibit "C."

2.13. **"Claim"**: Shall have the same meaning as set forth in Section 14.1(b).

2.14. **"Claimant"**: Shall have the same meaning as set forth in Section 14.2(a).

2.15. **"Clearwater Declaration"**: This Declaration of Covenants, Conditions and Restrictions for Clearwater at Lake Arrowhead, as amended from time to time. This Clearwater Declaration shall be effective upon recording in the official land records of Cherokee County, Georgia.

2.16. **"Club"**: The property or facilities located within, adjacent to, or near the Community that Purcell owns and operates for recreational and related purposes. The Club includes the "Common Properties" as defined in the Master Declaration, which includes, without limitation, the lakes, swimming facilities, tennis courts, club house, beach areas, roads and any golf course that is so located and its related and supporting facilities and improvements, and any and all other property that may become part of the Club as set forth in the Master Declaration. Notwithstanding anything to the contrary set forth in the Governing Documents, the Common Areas, as defined in this Clearwater Declaration, shall not constitute a portion of the Club, but rather, shall be exclusive to the Owners as well as their respective Occupants, Tenants, guests, and invitees.

2.17. **"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

2.18. **"Common Area"** and **"Common Areas"**: All real and personal property, including easements and other land use rights, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including areas designated as Common Area by Declarant from time to time, areas designated as "common element" or "common area" on a Plat. Common Area includes any Limited Common Area, as defined below. Notwithstanding anything to the contrary set forth in this Clearwater Declaration, the term "Common Area and/or Common Areas" shall not refer to the roads conveyed to Purcell as part of the Common Properties under and pursuant to Section 7.1(c) below.

2.19. **"Community"**: Shall generally refer to Clearwater at Lake Arrowhead, which shall be comprised of that certain real property and interests described in Exhibit "A" attached hereto and incorporated herein by this reference, together with any other real property that is hereafter submitted to the provisions of this Clearwater Declaration, less and except any portions thereof that may be dedicated to Cherokee County, Georgia or any municipality or other government entity, and less and except any real property withdrawn from the provisions of this Clearwater Declaration in accordance with the terms and conditions contained in this Clearwater Declaration.

2.20. **"Community-Wide Standard"**: The highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing within the Community, or (b) the minimum standards described in this Clearwater Declaration, the Design Guidelines, Use Restrictions, and Board resolutions. The Community-Wide Standard may contain both objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Section 4.2(c) of this Clearwater Declaration). The Community-Wide Standard may or may not be set out in writing. The Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Community matures.

2.21. **"Declarant"**: 2012 MIFP, LLC, a Texas limited liability company, or any successor or assign who has or takes title to any portion of the property described in Exhibit "A" for development and/or sale and who is designated as Declarant in a Recorded instrument that the immediately preceding

Declarant executes; provided, however, there shall be only one (1) Person entitled to exercise the rights and powers of the "Declarant" hereunder at any time. Notwithstanding anything to the contrary stated in this Clearwater Declaration, Purcell shall not be deemed to (a) be the Declarant or co-Declarant under this Clearwater Declaration, or (b) have reserved any Declarant's rights by virtue of Purcell's execution of this Clearwater Declaration.

2.22. "Declarant Control Period": The period of time during which the Declarant may appoint, remove, and replace Board members. The Declarant Control Period ends when any of the following occurs:

(a) when one hundred (100%) of the total number of Lots permitted by applicable zoning for the Community have Certificates of Occupancy issued thereon and have been conveyed to persons other than Builders holding title for purposes of construction and resale; or

(b) When, in its discretion, the Declarant so determines and declares in a Recorded instrument.

2.23. "Declarant Affiliate": Any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

2.24. "Design Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV for all construction other than new construction and modifications to existing structures performed by anyone other than the Declarant, as amended, expanded, and otherwise modified from time to time. Notwithstanding anything to the contrary stated in this Clearwater Declaration, the Initial Design Guidelines shall be generally consistent with those design guidelines prepared by Caldwell-Cline Architects and Designers and adopted for the Peninsula at Lake Arrowhead with the proviso that in the event the design guidelines applicable to the Peninsula at Lake Arrowhead are hereafter revised in a manner that causes such guidelines to be less restrictive, then the ARC may also adopt equivalent amendments to the Design Guidelines for the Clearwater Property.

2.25. "Dwelling": A single building or structure or portion of a building or structure situated upon a Lot, which is intended for use and Occupancy as a separate attached or detached Dwelling for one (1) or more persons.

2.26. "Eligible Holder": Shall have the same meaning as set forth in Section 16.1 of this Clearwater Declaration.

2.27. "Foundation": The Lake Arrowhead Foundation, Inc., a Georgia nonprofit corporation, its successors or assigns.

2.28. "Foundation Charter": The Charter for the Lake Arrowhead Foundation, Inc., as amended from time to time.

2.29. "Foundation Service Fee": The fee charged by the Foundation upon each transfer of title to a Lot, other than transfers that are exempt as set forth in the Foundation Charter or as set forth in Article XVII of this Declaration.

2.30. "Governing Documents": The documents referred to in Section 1.3 of this Clearwater Declaration.

2.31. "Improvement": Any (a) Dwelling, building, fence or wall; (b) any swimming pool, tennis court, basketball court, road, driveway, parking area or satellite dish; (c) any trees, plants, shrubs, grass

or other landscaping improvements of every type and kind; (d) docks, decks, patios, pavilions, screened porches, playground equipment; © amenity areas; (f) any other approved structure of any kind or nature.

2.32. "Lake Arrowhead Phase II Declaration": The Declaration Covenants, Conditions and Restrictions for Lake Arrowhead – Phase II dated November 9, 2007 and recorded in Deed Book 9937, Page 1, Cherokee County, Georgia Records, as amended and/or supplemented from time to time.

2.33. "LAPOA": Shall have the same meaning as set forth in Section 3.3 of the Preamble of this Clearwater Declaration, as may be further defined in the Master Declaration.

2.34. "LAYCC": Shall have the same meaning as set forth in Section 3.1 of the Preamble of this Clearwater Declaration, and shall incorporate by reference the definition of "Lake Arrowhead Yacht & Country Club" as set forth in Article I of the Master Declaration. The LAYCC manages certain property as provided in the Master Declaration.

2.35. "LAYCC Annual Assessment": Shall have the same meaning as set forth in Section 3.2 of the Preamble of this Clearwater Declaration. Notwithstanding anything to the contrary stated in this Clearwater Declaration, the LAYCC Annual Assessment applicable to Lots within the Community shall be equivalent to the annual assessment payable to the LAYCC by the owners of the Phase II Lots.

2.36. "LAYCC Initiation Fee": Shall have the same meaning as set forth in Section 3.1 of the Preamble of this Clearwater Declaration. Notwithstanding anything to the contrary stated in this Clearwater Declaration, the LAYCC Initiation Fee applicable to Lots within the Community shall be equivalent to the initiation fee payable to the LAYCC by the owners of the Phase II Lots.

2.37. "LAYCC Membership Fee": Shall have the same meaning as set forth in Section 3.3 of the Preamble of this Clearwater Declaration. Notwithstanding anything to the contrary stated in this Clearwater Declaration, the LAYCC Membership Fee applicable to Lots within the Community shall be equivalent to the membership fee payable to the LAYCC by the owners of the Phase II Lots.

2.38. "LAYCC Membership Plan": Shall have the same meaning as set forth in Section 3.3 of the Preamble of this Clearwater Declaration.

2.39. "LAYCC Policies": Shall have the same meaning as set forth in Article 4 of the Preamble of this Clearwater Declaration.

2.40. "Limited Common Area": A portion of the Common Area primarily benefiting one (1) or more, but less than all, Owners, as more particularly described in Article XII.

2.41. "Lot": A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed, and upon which a Dwelling is intended for development, use, and Occupancy. The term shall refer to the land, if any, which is part of the Lot as well as any Improvements, including any Dwelling, on the Lot. The boundaries of each Lot shall be shown on a Plat or other Recorded map; provided, however, in the case of a building containing multiple Dwellings for individual sale, each Dwelling capable of being sold individually shall be a separate Lot. The term shall not include the Common Area or property dedicated to the public or land owned by Declarant within the Community not yet subjected to a Supplemental Declaration.

A Parcel shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the Parcel. Thereafter, the subdivided portion shall contain the number of Lots shown on the Plat. Any portion not subdivided shall continue to be a single Lot.

2.42. **"Master Declaration"**: Shall have the same meaning as set forth in the Preamble of this Clearwater Declaration, as such Master Declaration may be supplemented and amended from time to time.

2.43. **"Master Plan"** or **"Master Development Plan"**: The land use plan or development plan for "Lake Arrowhead," as such plan may be amended from time to time, which plan may include all or a portion of the real property described in Exhibit "A".

2.44. **"Member"**: Each Owner of a Lot, subject to Section 6.2, holding Membership in the Association pursuant to this Clearwater Declaration.

2.45. **"Membership"**: A Membership in the Association and the rights granted to the Owners of Lots pursuant to Section 6.2 to participate in the Association.

2.46. **"Models"**: shall have the same meaning as set forth in Section 3.1(i).

2.47. **"Mortgage"**: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

2.48. **"Notice"**: Shall have the same meaning as set forth in Section 14.2(a).

2.49. **"Occupy", "Occupies", "Occupied", or "Occupancy"**: Unless otherwise specified in the Governing Documents, staying overnight in a particular Dwelling for at least ninety (90) total days in the subject calendar year. The term "Occupant" shall refer to any individual other than an Owner who Occupies a Dwelling or is in possession of a Lot or Parcel, or any portion thereof or building or structure thereon, whether as a Tenant or otherwise, other than on a merely transient basis (and shall include, without limitation, a Tenant).

2.50. **"Owner"**: The record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (e.g., a Mortgagee). If a Lot is sold under a Recorded agreement of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. An Owner is any Person or Persons who individually or collectively own fee title to a Lot or Parcel (as evidenced by a Recorded instrument), provided that: (a) the Declarant (and not the fee title holder) shall be deemed to be the "Owner" of each Lot or Parcel with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of the Declarant or a Declarant Affiliate; (b) in the event that, and for so long as, the Declarant or a Declarant Affiliate has, pursuant to a written agreement, an existing right or option to acquire any one (1) or more Lots or Parcels (other than by exercise of a right of first refusal or right or option to acquire any one (1) or more Lots or Parcels (other than by exercise of a right of first refusal or right to which the Declarant or a Declarant Affiliate has such right or option; (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to Georgia law, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot. Where reference is made in this Clearwater Declaration to Lots or Parcels "owned by" a Person, such phrase shall be deemed to refer to Lots or Parcels of which that Person is the Owner as determined pursuant to this definition.

2.51. **"Parcel"**: Each area of real property within the Community, and all Improvements situated thereon, shown as a separate parcel of land on the Master Development Plan; provided, however, that in the event a Parcel is split in any manner into portions under separate ownership (other than by subdivision of the Parcel by Recordation of a subdivision plat into Lots, each of which constitutes or may have constructed thereon only one (1) Dwelling) each portion under separate ownership shall thereafter constitute a separate Parcel. If the same Person owns two (2) or more contiguous parcels of land, they shall be considered one (1) Parcel for purposes of this Clearwater Declaration. A Parcel shall cease to be a Parcel when it has been fully subdivided into Lots (together with any type of Common Area, if any). If a portion of a Parcel is subdivided into Lots (and any type of Common Area, if any), the

subdivided portion shall cease to be a Parcel, but each remaining unsubdivided portion shall be a Parcel if it otherwise meets the requirements of the definition set forth in this definition.

2.52. "Party Structure": Each wall, fence, driveway, or similar structure built on the Lots which serves and/or separates any two (2) adjoining Lots or a Lot and Common Area shall constitute a party structure.

2.53. "Person": An individual, a corporation, a partnership, business trust, estate, a trustee, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

2.54. "Phase II Lots": Shall have the same meaning as set forth in Section 3.1 of the Preamble of this Clearwater Declaration.

2.55. "Plat": Any Recorded engineering or land survey plat for all or any portion of the Community, together with such other diagrammatic information regarding the Community as required by Georgia law, or as Declarant may Record, as they may be amended and supplemented from time to time.

2.56. "Purcell": The Purcell Co., Inc., a Delaware Corporation, formerly known as Diamondhead Corporation, and owner of the Club property or any successor or assign who has or takes title to any portion of the Club.

2.57. "Purcell Affiliate": Any Person directly or indirectly controlling, controlled by or under common control with Purcell, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Purcell (or another Purcell Affiliate) is a general partner, managing member or controlling shareholder.

2.58. "Record," "Recording," or "Recorded": To record, the recording of or recorded of record a legal instrument with the Clerk of the Superior Court of Cherokee County, Georgia, or such other place designated as the official Cherokee County location for recording documents affecting title to real estate.

2.59. "Reviewer": Shall have the same meaning as set forth in Section 4.2(c).

2.60. "Reserve": Funds that are set aside by an association to pay for the repair or replacement of Community assets for which the association is responsible.

2.61. "Respondent": Shall have the same meaning as set forth in Section 14.2(a).

2.62. "Single Family": A group of one (1) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than four (4) persons not all so related, who maintain a common household in a Dwelling.

2.63. "Special Assessment": Any Assessment levied and assessed against all Owners or some Owners in accordance with Section 8.3.

2.64. "Supplemental Declaration": A Recorded instrument under which the Declarant identifies Common Area and Limited Common Area, and/or imposes expressly or by reference additional restrictions and obligations on the land described in such Recorded instrument.

2.65. "Tenant": Person who has an agreement with Owner or a Tenant if approved in writing by the Board to lease the Dwelling for a minimum of six (6) months, provided that a copy of the lease has been provided to the Association (or its management agent, if any) and to LAYCC, and this lease is subject to this Clearwater Declaration.

2.66. **"Use Restrictions":** The use restrictions, rules, and regulations governing the use of and activities on the Lots set forth in Exhibit "B," in accordance with Article III.

2.67. **"Visible from Neighboring Property":** With respect to any given object, that such object is or would be visible to a person six feet (6') tall standing on neighboring property, on the level of the base of the structure or building being viewed.

CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance, and design the Community are what give it an identity and make it a place that people want to call "home." This Clearwater Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for community standards to evolve as the Community changes and grows.

ARTICLE III. RESTRICTIONS AFFECTING LOTS

3.1. Restrictions Affecting on Occupancy and Alienation.

(a) **Residential and Related Uses.** The Community shall be used for those purposes as set forth in Section 1.1, which includes, but is not limited to, residential, recreational, and related purposes. Related purposes may include, without limitation, offices for the Association or its management agent(s), Declarant's business or sales office(s) and any business use which meets the conditions of Section 3.1(b) below. In addition, the Association or Declarant may permit limited business activity within the confines of a Dwelling that does not detract from the Community's residential and recreational character. Supplemental Declarations or any other Recorded covenants may impose stricter standards than those contained in this Article III and the Association shall have standing and the power to enforce such standards.

(b) **Business Use.** No business shall be conducted in or from any Lot, except that an Owner or a resident of the Lot may conduct business activities within the Dwelling so long as:

(i) the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling;

(ii) the business activity complies with applicable zoning requirements;

(iii) the business activity does not involve regular visitation of the Dwelling by clients, customers, suppliers, or other business invitees or door-to-door solicitation within the Community; and

(iv) the business activity is consistent with the single-family residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Community, as determined in the Board's sole discretion.

The term "business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any Occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (A) such activity is engaged in full or part time, (B) such activity is intended to or does generate a profit, or (C) a license is required.

This Section shall not apply to restrict Declarant's activities in the Community, nor shall it restrict the activities of Persons approved by Declarant involved with the development and sale of property within the Community. Additionally, this Section shall not apply to any Association activity relating to operating and maintaining the Community, including the Community's recreational and other amenities.

Leasing a Dwelling for a period of at least six (6) months is not a "business" within the meaning of this Subsection.

(c) Leasing. For purposes of this Clearwater Declaration, the terms "lease" and "leasing" shall refer to the regular, exclusive Occupancy of a Dwelling by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or compensation. Any Lot that is leased shall be leased only in its entirety (e.g., separate rooms within the same Dwelling may not be separately leased). No fraction or portion may be leased.

No structure on a Lot other than the primary Dwelling shall be leased or otherwise Occupied for residential purposes, except that structures used for ancillary purposes may be Occupied, but not independently leased. There shall be no subleasing of a Dwelling or assignment of leases except with the Board's prior written approval.

All leases shall be in writing and shall disclose that the Tenants and all Occupants of the leased Lot are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease. The restrictions on lease terms set forth in this Subsection shall not apply to Lots owned by Declarant.

Notice of any lease, together with such additional information as the Board may require, shall be given to the Board or its designee by the Owner within ten (10) days of execution of the lease. The Owner must make available to the Tenant copies of the Governing Documents. The Association or the Board may adopt reasonable Use Restrictions and rules regulating leasing and subleasing and the activities of Tenants and subtenants.

No transient Tenants may be accommodated in a Dwelling. All leases, including sub-leases, shall be in writing and shall be for an initial term of at least six (6) months, except: (i) with the Board's prior written consent, or (ii) as Declarant initially authorizes in a Supplemental Declaration for Lot(s).

(d) Maximum Occupancy. No more than two (2) Persons per bedroom shall Occupy the same Dwelling on a regular and consistent basis (as determined in the Board's discretion).

(e) Occupants Bound. The Governing Documents apply to all Occupants of and visitors to any Lot. Every Owner shall cause anyone Occupying or visiting Owner's Lot to comply with the Governing Documents and shall be responsible for all violations and losses to the Common Area caused by such Persons, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

(f) Subdivision of a Lot and Time-Sharing. Lots may not be subdivided or their boundary lines changed except with the Declarant's prior written approval; provided, however, Declarant may subdivide, change the boundary line of, and replat any Lot(s) it owns, and, for so long as Declarant owns any property within the Community, convert Lots into Common Area or Common Area to Lots at any time prior to the transfer of title to the Association.

Timesharing, fraction-sharing, or similar programs whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years is prohibited, unless such program is established by Declarant, while Declarant owns any property within the Community.

(g) Disease and Insects. No Person shall permit anything or condition to exist upon any Lot, Parcel or other property which shall induce, breed or harbor infectious diseases or noxious insects.

(h) Mineral Exploration. No Lot, Parcel or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Declarant.

(i) Model Homes. Any provisions of this Clearwater Declaration, Supplemental Declarations or any other Declarations which prohibit non-residential use of Lots and certain Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes or other model Dwelling of any kind (including, without limitation, any used in whole or in part as sales offices, or design center displays (collectively "Models") by Persons engaged in the construction of Dwellings in the Community, or parking incidental to the visiting of such Models, so long as the construction, operation and maintenance of such Models and parking otherwise comply with all of the provisions of this Clearwater Declaration. The Architectural Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of Models. Any Dwellings or other structures constructed as Models shall cease to be used as Models at any time the Owner thereof is not actively engaged in the construction and sale of Dwellings in the Community and no Dwelling or other structure shall be used as a Model for the sale of Dwellings or other structures not located in the Community.

(j) Incidental Uses. The Architectural Review Committee may approve uses of property within a land use classification which are incidental to the full enjoyment of the Owners and Occupants of the Community within the land use classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Architectural Review Committee may wish to impose, in its sole discretion, for the benefit of the Community as a whole.

3.2. Framework for Regulation. In addition to the foregoing restrictions affecting Lots, the Governing Documents establish, as part of the general plan of development, a framework of affirmative and negative covenants, easements, and restrictions which govern the Community, including the Use Restrictions set forth in Exhibit "B." Within that framework, the Association must have the ability to respond to unforeseen problems and changes affecting the Community. Therefore, this Article III establishes procedures for modifying and expanding the Use Restrictions to respond to such changes.

The procedures set forth in this Article III shall not apply to the Board's enactment and enforcement of rules and regulations relating to use and operation of the Common Area or other administrative rules, which the Board may adopt by resolution.

3.3. Owner's Acknowledgment and Notice to Purchasers. All Owners are given notice that use of their Lots and the Common Area is limited by the Use Restrictions as amended, expanded, and otherwise modified from time to time. **Each Owner, by accepting a deed, and each Tenant, by accepting a Lease, acknowledges and agrees that the use, enjoyment, and marketability of Owner's Lot can be affected by the Use Restrictions and Board rules, which may change from time to time. All Lot purchasers are on notice that the Association may have adopted changes to the Use Restrictions and that such changes may not be set forth in a Recorded Instrument.** Copies of the current Use Restrictions and Board rules may be obtained from the Association, subject to a reasonable copy fee as set by the Board.

3.4. Rule Making Authority.

(a) By the Board. Subject to the notice requirements contained herein and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Use Restrictions and modify or rescind existing Use Restrictions by majority vote of the directors at any Board meeting. Members shall have a reasonable opportunity to be heard on the proposed change at such Board meeting.

If endorsed by the Board, the proposed change shall be approved unless disapproved by a majority of the Members. The Board is not obligated to call a meeting to consider disapproval unless it receives a petition of the Members, which meets the requirements for special meetings in the By-Laws. If the Board receives such a petition before the effective date of the Board's action under this Section 3.4(a), the proposed change shall not become effective until after a meeting is held, and then subject to the outcome of such meeting.

(b) By the Members. Alternatively, the Members, representing a majority of the votes in the Association, at an Association meeting duly called for such purpose, may vote to change the Use Restrictions then in effect. Any such change shall require approval of the Declarant during the Declarant Control Period.

(c) Notice to Owners. Before any Use Restriction change becomes effective, the Board shall provide at no cost a copy of the new or changed Use Restriction to each Owner. The change does not become effective until at least thirty (30) days following the date on which such new or changed Use Restriction is delivered to the Owners. Each Owner shall be bound regardless of whether such delivery is received. The Association shall provide a copy of the Use Restrictions then in effect to any requesting Member, Tenant or Mortgagee; provided, however, a reasonable copying fee may be charged for such reproduction. Notice under this Section may be sent to each Owner by any manner permitted under Georgia law, including, if so permitted: U.S. Mail, electronic communication (i.e., "fax" or "e-mail") with confirmation of receipt, or publication in the community newsletter delivered or mailed to each Owner, provided that such action is clearly identified under a separate newsletter headline.

(d) Bi-Annual Review. At least once every two (2) years after the Declarant Control Period ends, the Board shall review and evaluate the then current Use Restrictions for continued visibility or necessity within the Community.

(e) Limitation of Article III. No action taken under this Article III shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Clearwater Declaration other than the Use Restrictions.

3.5. Protection of Members and Residents. Except as may be set forth in this Clearwater Declaration (either initially or by amendment) or in the Use Restrictions, the Association's actions with respect to Use Restrictions and rules must comply with the following:

(a) Similar Treatment. Similarly situated Lots shall be treated similarly; however, the Use Restrictions may vary by housing type.

(b) Displays. No Use Restriction shall prohibit an Owner or Occupant from displaying religious or holiday symbols and decorations on his or her Lot of the kinds normally displayed in single-family residential neighborhoods; provided, however, holiday decorations shall be permitted in accordance with the Use Restrictions. In addition, no sign, including, but not limited to, notices of property for sale or rent, shall be erected within the Community, except for those signs (including posters, circulars, and billboards) that are required by legal proceedings; provided, however, security signs of a face area of twelve (12) square inches or less, in a style and location designated by the Declarant or its designee may be erected on a Lot without the Declarant's written consent. This restriction shall not apply to entry, directional, and marketing signs installed by Declarant or on Declarant's behalf. The Declarant shall have the right to erect signs as it, in its discretion, deem appropriate. The Association may adopt time, place, and manner restrictions with respect to symbols and displays visible from outside structures on the Lot, including reasonable limitations on size and number.

(c) Household Composition. The Association shall not interfere with the freedom of Members and Occupants within a Dwelling, except that it may limit the total number of Persons entitled to Occupy a Dwelling based upon the size of the Dwelling (based on such factors as the number of bedrooms), not to exceed the number permitted under current zoning ordinances, and limit the number of Occupants per household who have full privileges as members to use of the Common Area.

(d) Activities Within Dwellings. The Association shall not interfere with activities carried on within a Dwelling, except it may prohibit activities not normally associated with residential property, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling, or that create an unreasonable source of annoyance.

(e) Alienation. The Association shall not prohibit leasing or transfer of any Lot, subject to the Governing Documents. The Association may require that Owners use Association-approved lease forms (or include specific lease terms) and may impose a reasonable review or administrative fee on the lease or transfer of any Lot. Section 3.1(c) Imposes a minimum lease term.

(f) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(g) Reasonable Rights to Develop. No Use Restriction may unreasonably interfere with Declarant's ability to develop, market, and sell property within the Community.

(h) Interference with the Club. The Association may not interfere with the use or operation of the Club or its facilities, provided that no nuisance, safety or health issue is involved.

(i) Interference with Easements. No Use Restriction may unreasonably interfere with the exercise of any easement established in this Clearwater Declaration.

The limitations in Subsections (a) through (i) of this Section shall only limit rule making authority exercised under Section 3.4; they shall not apply to amendments to this Clearwater Declaration adopted in accordance with Article XIX.

ARTICLE IV. ARCHITECTURE AND LANDSCAPING

4.1. General. The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This Article IV explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Lots and Dwellings.

No structure or thing shall be placed, erected, or installed upon any Lot and no Improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations, or planting or removal of landscaping) shall take place within the Community, except in compliance with this Article IV and the Design Guidelines. Each Dwelling shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee, in its sole discretion, otherwise approves.

No approval shall be required to repaint the exterior of any Dwelling using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Any Owner may remodel, paint, or redecorate the interior of structures (including the Dwelling) on Owner's Lot without approval. However, modifications to the interior of screened porches, patios, and any other portions of a Lot visible from outside a structure shall be subject to approval as set forth in the Design Guidelines.

Any Dwelling constructed on a Lot shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Declarant or its designee, in its sole discretion, otherwise approves.

Approval under this Article IV is not a substitute for any approvals or reviews required by Cherokee County or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This Article IV shall not apply to Declarant's design and construction activities or to the Association's activities during the Declarant Control Period.

4.2. Architectural Review.

(a) By Declarant; New Construction. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for original construction within the Community. This right shall continue until one hundred percent (100%) of the Lots have been conveyed to Persons other than a Builder or an affiliate of Declarant, and contain a finished Dwelling for which a certificate of occupancy has been issued, unless Declarant earlier terminates its rights in a Recorded Instrument. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may, in its discretion, designate one (1) or more Persons or an outside management company or agent, from time to time to act on its behalf in reviewing applications. In addition, Declarant may from time to time, but shall not be obligated to, delegate or assign all or any portion of its rights under this Article IV to any other Person or committee, including the Architectural Review Committee. Any such delegation shall be in writing, specifying the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article IV, the jurisdiction of other Persons or committees shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Committee; Modifications. Until the termination or delegation of Declarant's rights set forth in Section 4.2(a), Declarant shall serve as the ARC and shall have the exclusive authority to administer and enforce architectural controls and to review and act upon all applications for modifications to improvements constructed within the Community. Until such time, Declarant shall maintain and provide to the Association records of all approvals and denials. Upon the termination or delegation of Declarant's rights under Section 4.2(a), the Board shall establish the ARC, which shall consist of at least three (3) but not more than seven (7) Persons. Members of the ARC shall be appointed by and shall serve at the discretion of the Board; provided, however, as long as Declarant owns any property within the Community, at all times, Declarant may appoint one (1) member of the ARC.

ARC members need not be owners or representatives of Owners. The ARC may, but need not, include architects, engineers, or similar professionals.

Until the termination or delegation of Declarant's rights set forth in Section 4.2(a), the ARC shall notify Declarant in writing within three (3) business days of any action (i.e., approval, partial approval, or disapproval) it takes under this Article IV. A copy of the application and any additional information Declarant may require shall accompany the notice. Declarant shall have the (10) business days after receipt of such notice to veto any such action, in its discretion, by written notice to the ARC.

The Declarant or the Board may create and appoint such subcommittees of the ARC as deemed appropriate. Such subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by such procedures as may be established by the ARC or the Board. Any action of any subcommittee shall be subject to the review and approval of the ARC and Declarant, for as long as Declarant owns any property described in the Community. Notwithstanding the

above, neither the ARC nor Declarant shall be obligated to review all actions of any subcommittees and the failure to take action in any instance shall not be a waiver of the right of the ARC or Declarant to act in the future.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or Declarant's rights under this Article IV terminate, the Association shall have no jurisdiction over architectural matters.

(c) Reviewer. The entity having jurisdiction in a particular case (whether Declarant or its designees or the ARC) shall be referred to as the "Reviewer."

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board shall include the estimated compensation of such Persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant shall prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions which vary among housing types, uses, or locations within the Community. The Design Guidelines are intended to provide guidance to Owners, Builders, and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions and compliance with the Design Guidelines does not guarantee approval.

Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 4.2(a). Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the ARC, unless Declarant also delegates the power to amend to the ARC. Upon termination or delegation of Declarant's right to amend, the ARC may amend the Design Guidelines with the written consent of the Board.

Amendments to the Design Guidelines shall apply prospectively only. The Design Guideline shall not require modifications to or removal of any structures previously approved once the approved construction or modification has commenced. However, any new work on such structures must comply with the Design Guidelines. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders upon request. In Declarant's discretion, the Design Guidelines may be Recorded, in which event the Recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Unless the Design Guidelines provide otherwise, no activities within the scope of this Article IV shall commence on any property within the Community until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines require. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, plants, materials, drainage, exterior lighting, irrigation, and other features of proposed construction.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges

that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. Subject to Declarant's veto right, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Article XIV or judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each completed application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any completed application within thirty (30) days after its receipt of a completed application and all required submissions; however, with respect to any ARC determination subject to Declarant's veto right under Section 4.2(b), the Reviewer shall notify the applicant in writing of the final determination within forty (40) days after its receipt of a completed application and all required submissions. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notice shall be deemed given at the time the envelope containing the response is deposited with the U.S. Postal Service. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required time period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time period, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any Owner.

In the event of any inconsistency between the procedures set forth in this Subsection (b) and the procedures set forth in the Design Guidelines, the procedures set forth in the Design Guidelines shall control.

(c) Exemptions. The Reviewer may exempt certain activities from the application and approval requirements of this Article IV if such activities are undertaken in strict compliance with the Design Guidelines and the Community-Wide Standard. For example, Builders may submit and receive pre-approval of landscaping or other plans for general application. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

4.4. No Waiver of Future Approvals. Each Owner acknowledges that the people reviewing applications under this Article IV will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances. The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance, however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Clearwater Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. No variance may be issued without Declarant's written consent for so long as Declarant owns any portion of the Community. Thereafter, a variance requires the Board's written consent.

4.6. Limitation of Liability. The standards and procedures established by this Article IV are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community they do not create any duty to any Person. Review and approval of any application pursuant to this Article IV may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every Dwelling is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

(a) Declarant, the Association, its officers, the Board, the ARC, the Association's management agent, any committee, and any member of any of the foregoing shall not be held liable for matters related to its decisions including, but not limited to, soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a Builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the ARC, and the members of each, and the Association officers, shall be defended and indemnified by the Association as provided in Section 7.7.

4.7. Certificate of Compliance. Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article IV or the Design Guidelines with respect to the Owner's Lot. The Association shall either grant or deny such written request within thirty (30) days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

ARTICLE V. LANDSCAPING, HOME MAINTENANCE AND REPAIR

5.1. Landscaping Requirements. Landscaping on a Lot shall be installed, as approved by the Architectural Review Committee, prior to the issuance of a certificate of occupancy for the Dwelling constructed on a Lot.

5.2. Maintenance of Lots. Each Owner shall maintain Owner's Lot, including the Dwelling and all other Improvements comprising the Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard, and any other applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or additional covenants applicable to such Lot.

Each Owner shall also be responsible for maintaining any sidewalk or landscaping located in the right-of-way adjacent to Owner's Lot unless the Association, pursuant to a Supplemental Declaration or any additional covenants, assumes all or part of such maintenance. However, Owners may not remove or add trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article IV.

5.3. Responsibility for Repair and Replacement. Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on Owner's Lot, less a reasonable deductible, unless the Association carries such insurance (which they may, but are not obligated to do). If the Association assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Benefited Assessment against the benefited Lot and the Owner.

Within ninety (90) days after any damage to or destruction of Improvements on a Lot, the Owner shall promptly repair or reconstruct such Improvements in a manner consistent with the original construction or such other plans and specifications approved in accordance with Article IV unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Lot of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

COMMUNITY GOVERNANCE AND ADMINISTRATION

This Clearwater Declaration establishes the Association as the mechanism by which each Owner is able to participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Association's Board in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's Membership -- the Owners.

ARTICLE VI. THE ASSOCIATION, ITS MEMBERS AND THE FOUNDATION

6.1. Function of Association. The Association is an entity through which each Owner can participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the Membership and voting rights vested in the Owners allow the Owners to participate in governance and operation of the Community and influence the outcome of major decisions.

The Association is responsible for management, maintenance, operation, and control of the Common Area. The Association also has primary responsibility for enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Georgia law.

6.2. Membership. Every Owner is automatically a Member of the Association. There shall be only one (1) Membership per Lot. If a Lot is owned by more than one (1) Owner, all co-Owners of the Lot shall share the privileges of the Membership, subject to reasonable Board regulation and the voting restrictions described in the By-Laws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. If an Owner is a corporation, a partnership, or other legal entity, its Membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary, except that only the individuals residing in the Lot shall be entitled to use any Common Area facilities available for use by Owners.

The Association shall have two (2) types of Membership: Members other than the Declarant and the Declarant. The Declarant shall be the sole Declarant Member, and such Membership shall terminate

two (2) years after expiration of the Declarant Control Period, or on such earlier date as the Declarant determines and declares in a Recorded instrument.

6.3. Voting.

(a) Members. Subject Section 7.4(a) and any other limitations on voting set forth in this Clearwater Declaration and the other Governing Documents, Members shall have one (1) equal vote for each Lot in which they hold the interest required for Membership under Section 6.2, except that there shall be only one (1) vote per Lot. The right to vote for a Lot commences at such time as the Lot is made subject to this Clearwater Declaration; provided, however, no vote shall be exercised for any Lot which is exempt from Assessment under Section 8.9. Furthermore, no votes shall be exercised for Lots that Declarant owns; rather, Declarant's consent is required for various actions of the Board, the Membership, and committees, as specifically provided elsewhere in the Governing Documents.

(b) Exercise of Voting Rights. Each Owner of a Lot shall exercise the vote for Owner's Lot. In any situation in which an Owner is entitled personally to exercise the vote for Owner's Lot, if there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners holding a majority of the ownership interest in the Lot determine among themselves. Any co-Owner may cast the vote for the Lot and majority agreement shall be conclusively presumed unless another co-Owner of the Lot protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement, the Lot's vote shall be suspended if two (2) or more co-Owners seek to exercise it independently.

6.4. Foundation. The Foundation was created as a vehicle for generating, enhancing, and preserving a genuine sense of community. While the Association is primarily responsible for managing Common Area and enforcing the use restrictions for the Community, the Foundation shall exist, in part, to empower, encourage and provide a means for each Owner and all residents and occupants of the Community to participate and benefit from community-oriented affairs, services, programs, and activities. The Association and the Foundation will work together and cooperate in performing these complimentary roles within the Community.

The Foundation has the rights and responsibilities that are described in its by-laws, articles of incorporation, and the Foundation Charter. The Association and all Owners are or will be subject to the Foundation Charter and to the Foundation's jurisdiction. A board of directors shall administer the Foundation's affairs as provided in its by-laws. In the event of a conflict between the Governing Documents and the Foundation's governing documents with respect to the Foundation's rights and responsibilities, the Foundation's governing documents shall control.

6.5. Membership in LAPOA and Use Rights in the Club. Every Owner, by acceptance of a deed to a Lot within the Community, acknowledges that the Lot is subject to the Master Declaration. Such Owner is granted use rights in the Club and is automatically a member of LAPOA, subject to the provisions within the Master Declaration. Each Owner shall be subject to the initiation fees and assessments and obligations contained in the Master Declaration.

ARTICLE VII. ASSOCIATION POWERS AND RESPONSIBILITIES

7.1. Acceptance and Control of Association Property.

(a) General. The Association, through action of its Board, may acquire, hold, lease (as lessor or Tenant), operate, and dispose of tangible and intangible personal property and real property.

(b) Conveyance by Declarant to the Association. Declarant and its designees may transfer to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibit "A". Such

conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of any instrument of conveyance of any interest in real property, and the property shall thereafter be Common Area to be used and maintained by the Association for the benefit of its members. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not such property has been made available for the use of Owners. This Clearwater Declaration may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any property of the property so conveyed as Declarant may reasonable require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses in the Association or the Owners, express or implied, unless and until any such property rights, easements or license are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument Recorded in the real estate records of Cherokee County, Georgia. Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved portions of the Common Area originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) All roads, road right-of-ways and attendant drainage facilities ("**Road System**") serving the Clearwater Property, once substantially complete, shall be transferred to and accepted by Purcell as part of the Common Properties under and as defined in the Master Declaration to be secured, managed, operated and maintained by Purcell consistent with other Common Properties within "Lake Arrowhead" (as defined in the Master Declaration) for the use of all Lot Owners of the Clearwater Property. Likewise, the sewage and water systems serving the Clearwater Property, once substantially complete, shall be transferred to and accepted by Lake Arrowhead Utility Company ("**LAUC**") to be secured, managed, operated, and maintained by LAUC consistent with other similar utilities covered by the Master Declaration. The term "substantially complete" as used herein shall mean completion of the roads, sewage and/or water systems, drainage, and other similar utilities to such degree that all elements of the same can be used for their intended purpose, all as certified by a licensed engineer.

(d) The Common Area. The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Owners and Occupants of Lots and may charge use fees, in such amount as the Board may establish, for such use.

7.2. Maintenance of Common Area. The Association shall maintain the Common Area in accordance with the Community-Wide Standard. The Common Area includes, but is not limited to:

(a) all portions of the Common Area, including Community entry features, including entry area landscaping, irrigation system, structures, and other improvements and the expenses for water and electricity, if any provided to the Common Area;

(b) landscaping within rights-of-way within or abutting the Community to the extent that responsible government authorities do not maintain it to the Community-Wide Standard;

(c) such property as may be dictated by Declarant in this Clearwater Declaration, any Supplemental Declaration, any Plat, or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Association; and

(d) any property and facilities that Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Declarant shall

identify any such property and facilities by written notice to the Association, and they shall remain part of the Common Area until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

(e) The Association shall also be responsible for proper functioning of the storm water drainage system serving the Community, including maintenance, repair and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system. It shall have no responsibility for landscaping or other maintenance of Lots burdened by storm water drainage easements unless otherwise specifically set forth in a Supplemental Declaration or in a Recorded agreement or plat.

The Association may maintain other property which it does not own, including, without limitation, Lots or property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Common Area in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing seventy-five percent (75%) of the eligible Member votes in the Association, and the Declarant, if any, agree in writing to discontinue such operation. This Section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, nor to preclude temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

Except as provided above, the Common Area shall not be reduced except the Declarant's prior written approval as long as Declarant owns any property within the Community.

The costs associated with maintenance, repair, and replacement of the Common Area shall be a Common Expense; provided, however, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Area pursuant to this Clearwater Declaration, a Supplemental Declaration, or other Recorded covenants or agreements. Maintenance, repair, and replacement of Limited Common Areas shall be a Common Expense assessed against only the benefitted Lots.

7.3. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as is reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Area to the extent that the Association has responsibility for repair or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least Two Million Dollars (\$2,000,000) per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage

may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at a reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) With respect to any contractors working on the premises or any third parties holding events on the premises, all such individuals shall be required to carry sufficient similar commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000) combined single limit per occurrence and One Million Dollars (\$1,000,000) general aggregate limit;

(iv) Workers' compensation insurance and employer's liability insurance, if and to the extent required by law;

(v) Earthquake, wind and flood damage coverage, if and to the extent required by law;

(vi) Automobile liability insurance for all Association owned, non-owned and hired vehicles with a minimum limit of Five Hundred Thousand Dollars (\$500,000) combined single limit per accident;

(vii) Directors and officers liability coverage; and

(viii) Commercial crime insurance, including fidelity insurance, covering all Persons, including Persons serving without compensation, responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

All of the coverage required herein shall be maintained with insurers rated B+ or better in the most current edition of Best's Insurance Reports.

Insurance obtained for the Association is not meant to replace any individual's personal liability or property insurance and it is strongly suggested that each Member of the Association carry their own personal coverage.

The Board, in the exercise of its business judgment, may obtain such additional insurance coverage and higher limits than this Section requires.

Certificates of insurance evidencing the minimum coverage required hereby by any parties described above (other than the Association) shall be filed with the Association at the time of execution of any agreement for services or events conducted on the premises and shall be maintained in a current status throughout the term of any such agreement. Such certificates of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the Association in the event of any cancellation, non-renewal or material (greater than 25% reduction) change in the policy limits, terms or conditions. Such third parties shall maintain all of their insurance and at the requested levels described above for not less than five (5) years following the expiration or termination of any Agreement with the Association.

Premiums for all Association insurance shall be a Common Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review prior to the adoption of the Budget of the sufficiency of its insurance coverage by one (1) or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Atlanta area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured. Declarant reserves the right to provide insurance under Declarant's policy, provided that the cost to replace the insurance when such coverage terminates shall be disclosed to the Membership as a footnote to the Budget.

(c) Deductible. The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or Tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment.

To the extent available at reasonable cost and terms, all Association insurance shall:

- (i) be written with a company authorized and licensed to do business in Georgia;
- (ii) be written in the name of the Association as trustee for the benefited parties. All policies on the Common Areas shall be for the benefit of the Association and its Members;
- (iii) not be brought into contribution with insurance purchased by Owners, their Mortgagees, or any Occupants of a Lot;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a Member in the Association;
- (vii) provide a waiver of subrogation against any Owner or household member of an Owner; and
- (viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (iv) a cross liability provision;

(v) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss; and

(vi) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause.

(d) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least seventy-five percent (75%) of the total eligible Member votes in the Association and the Declarant, during the Declarant Control Period, decide within sixty (60) days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, repairs shall be made unless at least seventy-five percent (75%) of the Owners to which such Limited Common Area is assigned vote not to repair or reconstruct and the Declarant, during the Declarant Control Period, consents. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain and place in a capital improvements account for the benefit of the Members any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the applicable insurance coverage premiums.

7.4. Compliance and Enforcement.

(a) Compliance. Every Owner, Occupant, and visitor to a Lot must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Section 7.4. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the Occupants, Tenants, guests, or invitees to their Lots, and for any damage to the Common Area that such Persons may cause.

The Association, Declarant and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws (provided only a single notice and hearing is required for continuing violations):

(i) imposing reasonable monetary fines, which shall constitute a lien upon the violator's Lot. Fines may be imposed within a graduated range. There is no limit on the aggregate amount of any fine for a continuing violation. In the event that any Occupant, Tenant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote (except that no hearing is required if the Owner is more than ninety (90) days delinquent in paying any Base or Special Assessment);

(iii) suspending any Person's right to use Common Area facilities (except that no hearing is required if the Owner is more than sixty (60) days delinquent in paying any Assessment or other charge owed the Association); provided, however, nothing shall authorize the Board to impair an Owner's or Occupant's access to his or her Lot;

(iv) suspending any services the Association provides (except that no hearing is required if the Owner is more than sixty (60) days delinquent in paying any Assessment or other charge owed to the Association);

(v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) levying Benefited Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Community-Wide Standard or other requirements under the Governing Documents;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV, including the Design Guidelines, from continuing or performing any further activities in the Community; and

(viii) Recording a notice of violation with respect to any Lot on which a violation exists.

(b) Enforcement. In addition, the Board or its designees may take the following enforcement actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercising self-help or taking action to abate a violation on a Lot in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, towing vehicles that are in violation of parking rules and regulations);

(ii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances; or

(iii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform Owner's maintenance responsibility, the Association may Record a notice of violation or perform such required maintenance and assess all costs incurred against the Lot and the Owner as a Benefited Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees that are actually incurred and court costs, reasonably incurred in such action.

(c) Board's Discretion. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may, but shall not be required to, enforce applicable city and county ordinances and Cherokee County may enforce their ordinances within the Community.

(d) Computation of Days. In computing the number of days for purposes of any provision of this Clearwater Declaration or any of the other Recorded documents, all days shall be counted including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

(e) So long as Purcell owns any property identified on the Master Plan or owns the Club, Purcell may enforce the provisions of the Governing Documents, including the Master Declaration, at law or in equity. Purcell may exercise self-help to cure any violation of the Governing Documents. In the event neither the Association nor the Owner cures the violation and Purcell exercises its right of self-help, Purcell shall be entitled to recover from the Association all costs expended in curing the violation. The Association shall promptly reimburse Purcell for all such costs and such amounts shall be a Benefited Assessment levied against the Lot violating the Governing Documents in accordance with Article 8.

(f) Remedies of the LAYCC. The LAYCC has a lien against each Lot to secure the obligation of each Lot to pay the LAYCC Membership Fee set forth in the Master Declaration. Such liens shall also secure the interest on any unpaid LAYCC Membership Fee, which shall be computed from its due date at a rate of eighteen percent (18%) per annum (subject to the limitations of Georgia law) and any costs of collection (including reasonable attorneys' fees that are actually incurred. Such lien shall be superior to all other liens except those held by any Recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Lot. LAYCC may enforce its lien by suit, judgment, and judicial or non-judicial foreclosure in the same manner as the Association under

Article 8. LAYCC may not exercise such remedies until it has given written notice to the Association and the violating Owner setting forth the violation and the requisite cure and the Association and/or the Owner has been given the opportunity to effectuate such cure, which shall be undertaken no more than seven (7) days after such written notice has been received by the Association and/or the Owner. Moreover, in the event Purcell conveys the ownership of the Club or assigns its rights under the Master Declaration, the LAYCC may, but shall not be obligated to, assign its rights set forth in this Section to the transferee of the Club.

7.5. Enforcement of the Design Guidelines.

(a) General. Any construction, alteration, or other work performed in violation of the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Association or Declarant, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure the nonconformance to the satisfaction of the requester or restore the Lot and/or Dwelling to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association, Declarant, or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Clearwater Declaration.

(b) Design Approvals. All design approvals shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, 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 by the deadline set forth in the approval, Declarant or the Association may, after notifying the Owner of the Lot and giving an opportunity to be heard in accordance with the By-Laws, enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment.

(c) Actions Imputed to Owner. All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Design Guidelines may be excluded from the Community, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither Declarant nor the Association, or their respective officers and directors, shall be held liable to any Person for exercising the rights granted by this Section.

(d) Enforcement by Declarant. The Association shall be primarily responsible for enforcement of the Design Guidelines. If, however, in the discretion of Declarant, the Association fails to take appropriate enforcement action, as authorized herein, within a reasonable time period, Declarant, for so long as it owns any property within the Community, may, but shall not be obligated to, exercise enforcement rights in the same manner as set forth above. 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 the Design Guidelines and the Reviewer's decisions. If the Association or Declarant prevails, they shall be entitled to recover all costs including, without limitation, reasonable attorneys' fees that are actually incurred and court costs, reasonably incurred in such action.

7.6. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly, or by reasonable implication, by the Governing Documents, or take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise the Association's rights and powers without a vote of the Membership. The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Area, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute any legal or other action or proceeding on behalf of or in the name of the Association or the Members. In exercising the Association's rights and powers, making decisions on

behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

7.7. Indemnification of Officers, Directors, and Others. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

Subject to Georgia law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which the indemnitee's personal liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.8. Safety and Security. Each Owner and Occupant of a Lot, and their respective guests and invitees, is responsible for their own personal safety and the security of their property within the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its Tenants and all Occupants of its Lot that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

7.9. Provision of Services. The Association may provide, or provide for, services and facilities for all or any of the Members and their Lots, and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Association's budget as a Common Expense and assess it as part of the Base Assessment, if provided to all Lots. If provided to less than all Lots, the Association may assess such costs as a Benefited Assessment. Such services and facilities to the extent not covered by the Base Assessment might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, trash collection and recycling, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay Assessments for such services.

7.10. Relationship with Other Properties. The Association may enter into contractual agreements or covenants to share costs with any neighboring properties or the owner of the Club to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.11. View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, any lake or open space within the Community will be preserved without impairment, and neither shall be obligated to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association and the Declarant (with respect to the Common Area) have the right to add trees, walls, fences, berms, homes or other structures, signs, lighting, water features and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Notwithstanding the above, the Design Guidelines or Association rules may impose requirements restricting the location of modifications to existing improvements designed to preserve views.

7.12. Relationship with Governmental and Tax-Exempt Organizations. The Association may enter into agreements or contracts with, or grant exclusive and/or nonexclusive easements over the Common Area to, state or local governments, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Members. The Association may contribute or receive money, real property (including Common Area), personal property, or services to or from any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

7.13. Relationship with the Foundation. The Association shall cooperate with the Foundation on all matters involving the Foundation's obligations and responsibilities under the Foundation Charter. To the extent necessary, the Association shall permit reasonable use of the Common Area facilities by the Foundation, "charter clubs," and other voluntary groups operated by and through the Foundation for the offices, programs, activities and services.

ARTICLE VIII. ASSOCIATION FINANCES

8.1. Budgeting and Allocating Common Expenses. Declarant shall establish the initial Base Assessments by calculating the amount needed to meet the financial needs of the Association for the fiscal year and dividing by the number of Lots platted (other than Declarant's Lots) as of the first day of the fiscal year. Declarant shall not be responsible for paying Assessments on Lots owned by Declarant, but shall instead pay Declarant's obligation pursuant to Section 8.6(b). In determining the Base Assessment, the Board may consider any Assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Assessment during the fiscal year. The Board shall make the final budget available and shall send notice of the amount of the Base Assessment with a summary of the budget to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Except as required for the exercise of approval rights under Section 8.8, the budget shall not be subject to Owner approval and there shall be no obligation to call a meeting for the purpose of considering the budget. If any proposed budget is disapproved under Section 8.8, or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to Section 8.8 and the notice requirements set forth above.

8.2. Budgeting for Reserves. The estimated expenses in each budget shall include, in addition to operating expenses for Common Area, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Area Expense. In determining the amount of such reserve contributions, the Board shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost and the contribution required to fund the projected needs by annual contributions over the useful life of the asset. Amounts to be funded as reserves shall be reflected in the Common Expense Budget.

The Board shall adopt a policy restricting the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. During the Declarant Control Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

The Board may enter into agreements with Declarant regarding the time and extent of Declarant contributions, on negotiated terms, under which Declarant may provide financial assurances in lieu of cash.

8.3. Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire Membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Clearwater Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing at least a majority of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Declarant, if any. Special Assessment shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.4. Benefited Assessments. The Association shall have the power to levy Benefited Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.10) or which the Association may otherwise provide to less than all Owners under this Clearwater Declaration or any Supplemental Declaration. Benefited Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, however, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefited Assessment under this Subsection (b).

The Association may also levy a Benefited Assessment against the Lots to reimburse the Association for costs incurred in bringing the Lot into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owner of the Lot and an opportunity for such Owners to be heard before levying any such Benefited Assessment.

8.5. Commencement of Assessment Obligation; Time of Payment. The obligation to pay Assessments or the LAYCC Membership Fee shall commence as to each Lot on the date of conveyance of title to Owner other than Declarant. The first annual Base Assessment levied on each Lot shall be prorated for the time remaining in the fiscal year. Further, with respect to a transfer from Declarant to a Builder, the obligation to pay Assessments or the LAYCC Membership Fee shall be delayed until the first to occur of: (i) thirty six (36) months following the transfer from Declarant to the Builder; or (ii) the date of conveyance of title to a Lot from a Builder to an Owner other than Declarant or a Builder.

Advance payment of Assessments may be required for the applicable payment period at closing of the transfer of title to a Lot. The Board may impose special requirements for Owners with a history of delinquent payment. The Board shall establish if Assessments are to be paid annually, semi-annually or in quarterly or monthly installments. Until the Board otherwise provides, the annual Base Assessment and shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his Lot, the Board may require the outstanding balance on all Assessments to be paid in full immediately.

8.6. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a Recorded agreement of sale for any Lot, covenants and agrees to pay all Assessments authorized in the Governing Documents. All Assessments, together with interest, which shall be computed from its due date at a rate of eighteen percent (18%) per annum (subject to the limitations of Georgia law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees actually incurred, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. The Recording of this Clearwater Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required.

The Board's failure to establish or obtain Member approval, if required, of Assessment amounts or rates or failure 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 Base Assessments on the same basis as during the last fiscal 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.

No Owner is exempt from liability for Assessments by non-use of Common Area, abandonment of Owner's Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant for which each Owner is jointly and severally liable. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request from an Owner, Mortgagee or other person designated by the Owner, the Association shall furnish to any Owner, Mortgagee or other person designated by the Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth the amount of any unpaid Assessment against such Owner's Lot. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Obligation. Declarant shall be liable for Assessments on any Lots it owns that are subject to Assessment under this Section, except that during the Declarant Control Period, the Declarant may satisfy its obligation to pay Base Assessments and Special Assessments for Common Expenses on Lots it owns either by paying such Assessments in the same manner as any other Owner, or by paying (i) any shortfall under the Common Expense budget resulting from events other than failure of other Owners to pay their Assessments, and (ii) any budgeted contributions to reserves in accordance with the Common Expense budget. Unless the Declarant otherwise notifies the Board in writing at least thirty (30) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Declarant Control Period, the Declarant shall pay Base Assessments on any Lots it owns that are subject to Assessment under Section 8.6 in the same manner as any other Owner liable for such Assessments. Regardless of the Declarant's election under this Section, any of the Declarant's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

(c) Declarant's Subsidy Option. The Declarant or any Declarant Affiliate may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Declarant under Section 8.6(b)). Any such subsidy may be treated as a contribution, an advance against future Assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

8.7. Lien for Assessments. The Association shall have a lien against each Lot, to secure payment of delinquent Assessments, as well as interest, late charges (subject to the limitations of Georgia law), and costs of collection (including reasonable attorneys' fees that are actually incurred). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, Assessments, and other levies which by law would be superior, (b) any lien authorized under the Master Declaration; and (c) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and Record any such document shall not affect the validity, enforceability, or priority of the lien.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid Assessments and other charges without foreclosing or waiving its Assessment lien.

Sale or transfer of any Lot shall not affect the Assessment lien or relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure. The purchaser of a foreclosed Lot shall not be personally liable for Assessments on such Lot due prior to the foreclosure sale. Such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to Assessment under Section 8.6, including such purchaser, its successors and assigns.

Notwithstanding the above, if a Lot is owned by the Association: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association.

8.8. Limitation on Increases of Assessments. Notwithstanding anything to the contrary stated in this Clearwater Declaration, and except for Assessment increases necessary for emergency situations, the Board may not impose a Base Assessment that is more than one hundred ten percent (110%) greater than such Assessments for the immediately preceding fiscal year without the approval of a majority of the eligible Members votes of the Association. Approval may be indicated by vote or written consent. An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible where a threat to personal safety is discovered; or
- (c) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible which could not reasonably have been foreseen by the Board in

preparing and distributing the pro forma budget pursuant to Section 8.1. However, prior to the imposition or collection of such an Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Notice of such resolution shall be provided to the Members along with the notice of such Assessment.

8.9. Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area and other portions of the Community which are not Lots; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

In addition, both Declarant and the Association shall have the right, but not the obligation, to grant exemptions to Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Clearwater Declaration for purposes listed in Section 501(c).

8.10. Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such Assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Clearwater Declaration and the By-Laws.

8.11. Club Assessment/Membership Dues. In addition to this Clearwater Declaration, each Lot is also subject to the Master Declaration. Accordingly, each Owner shall also pay assessments, fees and other charges levied by and payable to the LAYCC and/or LAPOA, as applicable, and there shall exist a lien against the Lot to secure payment of any such unpaid assessments, fees and other charges owed to the LAYCC and/or LAPOA, as applicable, which shall be collected as provided in the Master Declaration. Notwithstanding anything to the contrary set forth in the Master Declaration or this Clearwater Declaration, the LAYCC Membership Fee payable by Owners subject to this Clearwater Declaration shall be identical to the LAYCC Membership Fee payable by the owners of the Phase II Lots. Moreover, in the event that the Master Declaration is amended to require the payment of any modified assessments, additional assessments, charges and/or fees to the LAYCC, LAPOA or any third party, such modified assessments, additional assessments, charges and/or fees payable to the LAYCC, LAPOA or any third party under the Master Declaration by the Owners subject to this Clearwater Declaration shall be identical to those modified assessments, additional assessments, charges and/or fees payable by the owners of the Phase II Lots.

COMMUNITY DEVELOPMENT

This Clearwater Declaration reserves various rights to the Declarant in order to facilitate the smooth and orderly development of the Community.

ARTICLE IX. EXPANSION OF THE COMMUNITY

9.1. Expansion by the Association. The Association also may submit additional real property to the provisions of this Clearwater Declaration by Recording a Supplemental Declaration describing such additional real property. Any such Supplemental Declaration shall require the affirmative vote of more than fifty percent (50%) of the Members in person or by proxy at a meeting duly called for such purpose, and the consent of the property owner. In addition, so long as Declarant owns any property within the Community, Declarant's consent is required. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is required. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

9.2. Additional Covenants and Easements. Any Supplemental Declaration, that Declarant records may impose additional covenants and easements on the property described in such Supplemental Declaration, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Benefitted Assessments. Such provisions may be included in a Supplemental Declaration submitting new property to this Clearwater Declaration or may be set forth in a separate Supplemental Declaration applicable to property previously submitted to this Clearwater Declaration. If someone other than Declarant owns the property, then the Owner's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may add to, create exceptions to, or otherwise modify the terms of this Clearwater Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.3. Effect of Filing Supplemental Declaration. A Supplemental Declaration shall be effective upon Recording, unless otherwise specified. On the effective date of the Supplemental Declaration, the Lots are thereby subjected to this Clearwater Declaration and the jurisdiction of the Association and shall have equal voting rights in the Association and equal pro rata liability for Base Assessments with all other Lots.

ARTICLE X. ADDITIONAL RIGHTS RESERVED TO DECLARANT

10.1. Withdrawal of Property. For so long as Declarant owns any property within the Community, Declarant reserves the right to amend this Clearwater Declaration to remove any unimproved portion of the Community from the coverage of this Clearwater Declaration, provided such withdrawal does not reduce the total number of Lots then subject to this Clearwater Declaration by more than ten percent (10%). "Unimproved" means that no permanent structure has yet been built on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal and shall reconvey to Declarant any withdrawn property owned by the Association.

10.2. Marketing and Sales Activities. Notwithstanding anything to the contrary stated in this Clearwater Declaration, Declarant and Builders may construct, use, and maintain upon portions of the Common Area and other property owned by Declarant or the Builder such facilities and activities, as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities and activities shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model Dwellings, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient or incidental to construction or sales activities, Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. Declarant and Builders shall have easements for access to and use of such facilities at no charge. Builder's rights under this Section 10.2 are subject to Declarant's approval.

10.3. Right to Develop. Declarant, Declarant Affiliates and their employees, agents and designees shall have a right of access and use and an 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.

Each Owner acknowledges that the Community is part of a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise object to (a) changes in uses or density of property within the Community, or (b) changes in the Master Plan as it may relate to property within the Community.

Nothing contained in this Clearwater Declaration shall be construed to prevent the construction, installation or maintenance by the Declarant, any Declarant Affiliate or any agents or contractors thereof, during the period of development, construction and sales on the Community, of improvements, landscaping or signs deemed necessary or convenient by the Declarant, in its sole discretion, to the development or sale of property within the Community.

10.4. Right to Designate Sites for Governmental and Public Interests. For so long as Declarant owns any property within the Community, Declarant may designate sites within the Community for government, education, or religious activities and interests, including without limitation, fire, police and utility facilities, schools and educational facilities, houses of worship, parks and other public facilities subject to receiving all necessary approvals. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

10.5. Right to Approve Additional Covenants. No Person shall Record any additional covenants, conditions or restrictions affecting any portion of the Community without Declarant's review and written consent. Any instrument Recorded without such consent shall be void and of no force and effect unless subsequently approved by written consent, signed by Declarant, and then Recorded.

10.6. Right to Approve Changes in Community Standards. No amendment to or modification of any Use Restrictions, rules, or the Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Clearwater Declaration or which may become subject to this Clearwater Declaration in accordance with Section 9.1.

10.7. Right to Transfer or Assign Declarant Rights. Any or all of Declarant's special rights and obligations set forth in this Clearwater Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, however, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Clearwater Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a Recorded instrument signed by Declarant. Declarant may allow other Persons to exercise, on a one time or limited basis, any Declarant right without transferring such right in its entirety. In such case, a Recorded instrument is not required.

10.8. Exclusive Rights to Use Name of Development. No Person (other than Declarant, Declarant Affiliate, or the Association) shall use the name "Lake Arrowhead" or any derivative of such name in any printed or promotional material, or in logo or depiction, without Purcell's prior written consent. However, Owners may use the name "Lake Arrowhead" where such term is used solely to specify that particular property is located within the Community.

10.9. Equal Treatment. So long as Declarant owns any property described in the Community, neither the Association nor any other Person shall, without the prior written consent of Declarant, adopt any policy, rule or procedure that:

(a) limits the access of Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;

(b) limits or prevents Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing, or using the Association or its Common Areas or any property owned by any of them in promotional materials;

(c) limits or prevents purchasers of new residential housing constructed by Declarant, its successors, assigns and/or affiliates in the Community from becoming members of the Association or enjoying full use of its Common Areas, subject to the Membership provisions of this Clearwater Declaration and the By-Laws;

(d) discriminates against or singles out any group of Members or prospective Members or Declarant [this provision shall expressly prohibit the establishment of a fee structure (*i.e.*, Assessments, Special Assessments and other mandatory fees or charges other than Benefited Assessments and use fees) that discriminates against or singles out any group of Members or Declarant, but shall not prohibit the establishment of Benefited Assessments;

(e) impacts the ability of Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for the Community. Policies, rules or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Community shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

(f) impacts the ability of Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

The Association shall not exercise its authority over the Common Areas (including, but not limited to, any means of access to the Community) to interfere with the rights of Declarant set forth in this Clearwater Declaration or to impede access to any portion of the Community over the streets and other Common Areas within the Community. The Association shall not condone, encourage its members or participate in public assembly for the purpose of interfering with Declarant's business within the Community or engage in any activity that presents a public health or safety risk.

10.10. Right to Use Common Area for Special Events. As long as Declarant owns any property within the Community, Declarant shall have the right to use all Common Area, including recreational facilities, to sponsor special events for charitable, philanthropic, and social purposes as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions:

(a) the availability of the facilities for the period of time requested of the Association by the Declarant, provided that the request is not submitted more than six (6) months prior the actual special event.

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event (as per the insurance requirements for such events set forth herein) other than customary use charges that shall be waived; and

(c) Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign its rights contained in this Section 10.10 to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Clearwater Declaration.

10.11. Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Community (including the Lots), and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a Dwelling or other structure on a Lot shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, and pay for, any resulting damage.

10.12. Right to Notice of Design or Construction Claims. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing ten (10) days prior to the inspection and given an opportunity to meet with the property Owner and conduct an independent inspection.

10.13. Termination of Rights. The rights contained in this Article X shall terminate upon the earlier of (a) thirty (30) years from the date this Clearwater Declaration is Recorded, or (b) Declarant's Recording of a written statement that all sales activity has ceased. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article X only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. This Article X shall not be amended without Declarant's written consent so long as Declarant owns any property within the Community.

PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the Community.

ARTICLE XI. EASEMENTS

11.1. Easements in Common Area. Declarant grants to each Owner a nonexclusive right and easement of use, access and enjoyment in and to the Common Area, subject to the following:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend the right of an Owner to use any Common Area amenity (A) for any period during which any Assessment or other charge against the Owner's Lot remains delinquent, and (b) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;

(iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Clearwater Declaration;

(iv) rent any portion of the Common Area recreational facilities, if any, on an exclusive or nonexclusive short-term basis to any Person;

(v) permit use by people from outside of the Community, which use may be subject to admission charges, Membership fees, or other user fees established in the Board's discretion; and

(vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred.

(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII; and

(e) The Association's right to close or limit the use of the Common Areas, or portions thereof, while maintaining and repairing the same.

An Owner who leases Owner's Lot shall be deemed to have assigned all such rights to the Tenant of such Lot for the period of the lease.

11.2. Easements of Encroachment. Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or the Club and 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 these restrictions) to a distance of not more than three feet (3'), 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.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property within the Community perpetual nonexclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Community, cable and other systems for sending and receiving data and/or other electronic signals, drainage systems, and security and similar systems;

(ii) installing underground walkways, pathways and trails, street lights, and signage on property which Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a Plat;

(iii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described above; and

(iv) access to read utility meters.

Notwithstanding the above, Declarant reserves the right to grant or deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Utility Easements. Declarant also reserves for itself the nonexclusive right and power to grant and Record such utility easements as may be necessary, in Declarant's sole discretion, in

connection with the orderly development of any property located within the Community. The location of the easement shall be subject to the written approval of the burdened Owner, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in Subsections (a) and (b) of this Section shall be performed in such manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant.

11.4. Easements for Maintenance, Emergency, and Enforcement. Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents to abate a violation of the Governing Documents and/or to remove any structure, thing or condition which violates the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all 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. Any costs incurred, including reasonable attorneys' fees that are actually incurred, shall be assessed against the Lot Owner as a Benefited Assessment.

11.5. Easements for Cross-Drainage. Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Community; provided, however, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, and Declarant as long as it owns any property within the Community.

11.6. Rights to Storm Water Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section may not be amended without the consent of Declarant and the rights created in this Section shall survive termination of this Clearwater Declaration.

11.7. Easements for Lake Maintenance and Flood Water. The Declarant reserves for itself and its respective successors, assigns and designees an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands, to the extent reasonably necessary to exercise its rights to use, maintain, and operate such amenities. Such right shall include, but not be limited to, entering upon bodies of water and wetlands located within the Community and enter upon adjacent Lots to the extent necessary to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Club; (b) construct, maintain and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant and its successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise its rights under this Section.

The Declarant further reserves for itself and its respective successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the Dwellings thereon) adjacent to or within one hundred feet (100') of bodies of water and wetlands within the Community, in order to (a) temporarily flood and back water upon and maintain water

over such property; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Community; and (c) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to use 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 the Declarant or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.

ARTICLE XII. LIMITED COMMON AREAS

12.1. Purpose. Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and Occupants within a particular section of the Community. For example, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, and other portions of the Common Area within a particular section of the Community. All costs associated with maintenance, repair, replacement and insurance of a Limited Common Area shall be a Benefitted Assessment allocated among the Owners in the Community to which the Limited Common Areas are assigned.

12.2. Designation. Initially, any Limited Common Area shall be designated as such in a Supplemental Declaration, the deed conveying such area to the Association, or on a Plat; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots, so long as Declarant owns any property subject to this Clearwater Declaration.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and approval of a majority of the Owners of Lots affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Clearwater Declaration, Declarant's written consent also is required.

ARTICLE XIII. PARTY WALLS AND OTHER SHARED STRUCTURES

13.1. General. Except as may otherwise be provided by law, a written agreement between Owners of adjacent Lots, or other Recorded documents applicable to adjacent Lots:

(a) Each wall, fence, driveway, or similar structure built as part of the original construction on the Lots which serves and/or separates any two adjoining Lots or a Lot and Common Areas shall constitute a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who own property benefitted by the party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right to and obligation of contribution for party walls and similar structures between Owners, as provided in this Section, shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(d) To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall

apply to any party structure. Any dispute arising concerning a party structure shall be subject to the provisions of Article XIV.

RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of the Community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the Community and with our neighbors, and protection of the rights of others who have an interest in the Community.

ARTICLE XIV. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

14.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) General. From time to time, disputes may arise between Owners, or between an Owner and the Association, Declarant, or others involved in the Community. This Article XIV commits the parties to any such dispute to work together in an attempt to resolve the dispute without litigation, in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's Membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

Declarant, the Association and its officers, directors and committee members, all Persons subject to this Clearwater Declaration, and any Person not otherwise subject to this Clearwater Declaration who agrees to submit to this Article XIV (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.2 in a good faith effort to resolve such Claim.

(b) Claim. As used in this Article XIV, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relation to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review and shall not be subject to this Article XIV;

(c) Not a Claim. The following shall **not** be considered a "Claim" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

- (i) any suit by the Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such 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 Articles III, IV, and V of this Clearwater Declaration (relating to creation and maintenance of community standards);

(iii) any suit that 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;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 14.2; and

(v) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll or extend the Claim's statute of limitations to comply with this Article XIV.

14.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the board 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) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent 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 negotiating a resolution of the Claim.

(c) Mediation. If the Bound Parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with a Person designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the metropolitan Atlanta area. Each Bound Party shall submit to the mediator a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within thirty (30) days after submitting the matter to mediation, or within such time as determined reasonable 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 that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including reasonable attorneys' fees that are actually incurred, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, reasonable attorneys' fees that are actually incurred and court costs.

14.3. Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding against the Declarant or anyone else unless first approved by a vote of Members entitled to cast seventy-five percent (75%) of the total eligible Member votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) Initiated during the Declarant Control Period;
- (b) Initiated to enforce the provisions of this Clearwater Declaration, including collection of Assessments, and foreclosure of liens;
- (c) Initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) Initiated against any contractor (exclusive of the Declarant), vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings. In the matters listed above, the Directors of the Association shall be indemnified for their decisions pursuant to Section 7.7.

ARTICLE XV. LAKE ARROWHEAD YACHT & COUNTRY CLUB

15.1. Right to Use the Club. Purcell or its successor or assigns, in its capacity as a company, is the owner of the Club and has Recorded the Master Declaration to grant specific rights for Owners to use certain recreational facilities of the Club, provided that such Owners pay the LAYCC Membership Fee associated with the LAYCC membership category for which the Owner belongs. Purcell may transfer or assign the rights set forth in the Master Declaration with respect to the Club in its sole and absolute discretion. Access to and use of the Club is strictly subject to the rules and procedures of the owners of the Club, and no Person gains any right to enter or to use the Club by virtue of Membership in the Association or ownership of a Lot, except as may be set forth in the Master Declaration

All Persons are hereby advised that no representations or warranties have been made or are made by the Declarant, the Association, or by any Person acting on behalf of any of the foregoing with regard to the continuing ownership or operation of the Club. No purported representation or warranty in

such regard, written or oral, shall be effective unless specifically set forth in a written instrument which the record owner of the Club executes.

Rights to use the Club will be granted only to such person, and on such terms and conditions as may be determined by Purcell. Purcell shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Club, including without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written Membership agreements or documents.

15.2. Lake Arrowhead Yacht & Country Club, Inc. As set forth in the Master Declaration and as provided herein, every Owner, except for Builders, shall be extended a "Resident" membership in the "Community" use category in the Club, and shall maintain such "Resident" membership so long as the Owner owns a Lot within the Community. Each Owner's "Resident" membership in the "Community" use category in the Club shall be effective immediately upon taking title to a Lot and payment of the LAYCC Initiation Fee and shall continue so long as Owner owns such Lot, subject to all of the provisions of the LAYCC Membership Plan and the Master Declaration. Membership in the LAYCC is subject to the terms of the LAYCC Membership Plan and the LAYCC Policies, including the provisions regarding payment of the LAYCC Membership Fee and the Club's rules and policies. By virtue of taking title to a Lot, each Owner agrees, on behalf of itself, its heirs, personal representatives, and successors-in-title to the Lot to pay the LAYCC Membership Fee regardless of such Owner's use or nonuse of the Club's facilities and comply with the terms of the Master Declaration and LAYCC Membership Plan as long as such Owner owns a Lot. Neither Owners nor any other persons, by virtue of membership in the Club, acquire any ownership interest, beneficial interest, or other vested interest whatsoever in the Club but only the privilege of using and enjoying the Club's facilities in accordance with the Master Declaration, LAYCC Membership Plan and any rules of the Club, which are subject to change from time to time. The obligation to pay the LAYCC Membership Fee and the benefits of "Resident" membership in the "Community" use category in the Club shall run with the title to the Lot and shall be binding on all subsequent Owners of the Lot.

15.3. Conveyance of the Club. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Purcell, Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Club. The ownership or operation of the Club (or any portion thereof) may change at any time. This may be for different reasons, such as (a) the sale to or assumption of operations by an independent Person, (b) establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Club or a Person owned or controlled by its members become the owner(s) and/or operators of the Club, or (c) the conveyance of the Club to one (1) or more Purcell Affiliates. Consent of the Association or any Owner shall not be required to effectuate any change in ownership or operation of the Club, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

15.4. Limitations on Amendments. In recognition of the fact that the provisions of this Article XV are for the benefit of the Club, no amendment to this Article XV, and no amendment in derogation of any other provisions of this Clearwater Declaration benefitting the Club, may be made without the written approval of Purcell.

15.5. Jurisdiction and Cooperation. The Association and LAYCC shall cooperate to the maximum extent possible in the operation of the Community and the Club. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate Use Restrictions affecting activities on or use of any the Club without the prior written consent of LAYCC.

ARTICLE XVI. MORTGAGEE PROVISIONS

16.1. Notices of Actions. The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article XVI apply to both this Clearwater Declaration and to the By-Laws, notwithstanding any other provisions contained therein. The provisions of this Article XVI are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Community. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot 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 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 a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or Occupant which is not cured within sixty (60) days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

16.2. No Priority. No provision of this Clearwater 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 Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.3. 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 Lot.

16.4. 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 thirty (30) days of the date of the Association's request, provided that such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

CHANGES IN THE COMMUNITY

Communities such as this one are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents' age and change over time, and as the surrounding community changes. The Community and its Governing Documents must be able to adapt to these changes while protecting the things that make the Community unique.

ARTICLE XVII. CHANGES IN OWNERSHIP OF LOTS

Any Owner, other than Declarant, desiring to sell or otherwise transfer title to Owner's Lot shall give the Board (or its management agent, if any) at least fourteen (14) 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 Owner, including Assessment obligations, until the date upon which the Board, notwithstanding the transfer of title, receives such notice. In addition, upon completion of the transfer, the Owner shall pay the Foundation Service Fee as described in the Foundation Charter; provided, however: (i) pursuant to the Foundation Charter, the transfer of title to a Lot by Declarant or Declarant Affiliate shall constitute an "exempt transfer" and such Foundation Service Fee shall not be payable by Declarant or Declarant Affiliate in the sale of a Lot by Declarant or Declarant Affiliate to a Builder or any other third party, but the Foundation Service Fee shall be payable in subsequent transfers of such Lots except as may herein be exempted; and (ii) should the Foundation Charter be amended to include any additional exemptions from payment of the Foundation Service Fee applicable to the Phase II Lots, those same exemptions shall apply to the Lots covered by this Clearwater Declaration.

ARTICLE XVIII. CHANGES IN COMMON AREA

18.1. Condemnation. If any part of the Common Area is by taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required herein, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. The board may convey Common Area under threat of condemnation only if approved in writing by at least sixty-seven percent (67%) of the Members in the Association and Declarant, as long as Declarant owns any property within the Community. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a Common Area on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Area to the extent practicable, unless, within sixty (60) days after such taking, Declarant, so long as Declarant owns any property within the Community, and at least sixty-seven percent (67%) of the total Members in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

(b) If the taking does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

18.2. Partition. Except as permitted in this Clearwater Declaration, the Common Area shall remain undivided and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Clearwater Declaration.

18.3. Transfer or Dedication of Common Area. The Association may dedicate portions of the Common Area to Cherokee County or to any other local, state or federal governmental or quasi-governmental entity.

ARTICLE XIX. AMENDMENT

19.1. By Declarant. Notwithstanding anything to the contrary contained in the Master Declaration, any amendment, revision, or alteration to this Clearwater Declaration shall be governed by and subject to the procedures set forth in this Clearwater Declaration. In addition to specific amendment rights granted elsewhere in this Clearwater Declaration, until all Lots have been conveyed to a Person other than a Builder, Declarant may unilaterally amend this Clearwater Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on the Lots; (d) to correct clerical or technical errors; or (e) to satisfy the requirements of any local, state, or federal governmental agency; or (e) for any other purpose, provided that such amendment has no materially adverse effect upon the rights of more than ten percent (10%) of the Owners. However, any such amendment shall not adversely affect the title to any Lot unless the Owner consents in writing. Moreover, no amendment under this Section 19.1 shall be made to Sections 3.5(h), 8.11, 9.1 and 10.8 of this Clearwater Declaration without the written approval of Purcell.

19.2. By Members. Except as otherwise specifically provided above and elsewhere in this Clearwater Declaration, this Clearwater Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes in the Association, including seventy-five percent (75%) of the eligible Member votes in the Association. In addition, so long as Declarant owns any property within the Community, any such amendment shall also require Declarant's consent. Notwithstanding the foregoing, 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.

19.3. Validity and Effective Date. No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant (or the assignee of such right or privilege). If an Owner consents to any amendment to this Clearwater 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.

Any amendment shall only become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) 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 Clearwater Declaration.

19.4. Exhibits. Exhibit "A" attached to this Clearwater Declaration is incorporated by this reference and amendment of said exhibit shall be governed by this Article XIX. In addition, Exhibit "B" is incorporated by this reference and may be amended as provided in Article III or pursuant to this Article XIX. Furthermore, Exhibit "C" is attached for informational purposes and may be amended as provided therein.

[execution pages follow]

IN WITNESS WHEREOF, Purcell, has caused this Clearwater Declaration to be executed under seal the day and year first written above.

PURCELL:

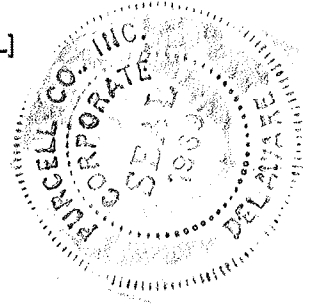
PURCELL CO., INC. (formerly Diamondhead Corporation), a Delaware corporation

By: [Signature]
Name: ARTIS E. JAMES, JR.
Its: VICE PRESIDENT

ATTEST:

By: [Signature]
Name: CARL COFFE
Its: SECRETARY

[CORPORATE SEAL]



Signed, sealed and delivered on
this 19th day of JULY, 2016
in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public
My Commission expires: May 28, 2020



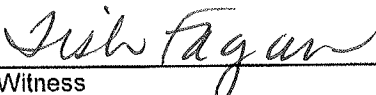
IN WITNESS WHEREOF, MIFP, as the "Declarant" under this Clearwater Declaration, has caused this Clearwater Declaration to be executed under seal the day and year first written above. Moreover, as the owner of the tract or parcel of land described in Exhibit "A" of this Clearwater Declaration, attached hereto, MIFP does hereby declare and consent, on behalf of itself and its heirs, successors, legal representatives, successors-in-title and assigns that the property of MIFP described on Exhibit "A" of this Clearwater Declaration, attached hereto, shall be owned, held, transferred, sold, conveyed, used, occupied, and encumbered subject to all of the terms, provisions, covenants, restrictions and easements contained in the Master Declaration and this Clearwater Declaration.


MIFP/DECLARANT:

2012 MIFP, LLC
a Texas limited liability company

By:  (SEAL)
Name: Tim Moore
Title: President

Signed, sealed and delivered on
this 20th day of July, 2016
In the presence of:


Unofficial Witness


Notary Public
My Commission expires:

[NOTARY SEAL]

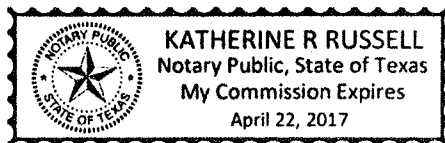


EXHIBIT "A"

LAND INITIALLY SUBMITTED

Property Line Description for Lake Arrowhead POD "F"

ALL THAT TRACT OR PARCEL OF LAND (the "Land") lying and being in Land Lot 201, 231, and 232 of the 22nd District, 2nd Section, Cherokee County, Georgia, and being more particularly described as follows:

BEGINNING at intersection of the easterly right of way of Lake Arrowhead Drive (120' Private Road) and the northerly right of way of Country Club Lane (variable R/W); thence along said easterly right of way along a curve to the left an arc distance of 73.76 feet, said curve having a radius of 1060.00 feet and being subtended by a chord of 73.74 feet at North 20 degrees 28 minutes 01 seconds West to a point; thence North 22 degrees 27 minutes 38 seconds West 352.52 feet to a point; thence along a curve to the right an arc distance of 243.30 feet, said curve having a radius of 340.00 feet and being subtended by a chord of 238.14 feet at North 01 degrees 57 minutes 38 seconds West to a point; thence North 18 degrees 32 minutes 22 seconds East 265.04 feet to a point; thence along a curve to the left an arc distance of 145.91 feet, said curve having a radius of 760.00 feet and being subtended by a chord of 145.69 feet at North 13 degrees 02 minutes 22 seconds East to a point; thence North 07 degrees 32 minutes 22 seconds East 272.63 feet to a point; thence along a curve to the right an arc distance of 184.37 feet, said curve having a radius of 340.00 feet and being subtended by a chord of 182.12 feet at North 23 degrees 04 minutes 27 seconds East to a point; thence leaving said easterly right of way South 46 degrees 30 minutes 02 seconds East 355.42 feet to a point; thence South 54 degrees 00 minutes 00 seconds East 181.47 feet to a point; said point being the POINT OF BEGINNING; thence North 36 degrees 00 minutes 00 seconds East 383.80 feet to a point; thence South 58 degrees 01 minutes 09 seconds East 161.04 feet to a point; thence North 71 degrees 24 minutes 54 seconds East 124.68 feet to a point; thence North 75 degrees 39 minutes 41 seconds East 119.38 feet to a point; thence South 78 degrees 12 minutes 18 seconds East 81.62 feet to a point; thence South 33 degrees 02 minutes 17 seconds East 144.15 feet to a point; thence South 25 degrees 47 minutes 00 seconds East 122.76 feet to a point; thence South 10 degrees 00 minutes 26 seconds East 98.94 feet to a point; thence South 02 degrees 03 minutes 25 seconds West 98.52 feet to a point; thence South 63 degrees 18 minutes 53 seconds East 58.75 feet to a point; thence South 18 degrees 57 minutes 25 seconds East 100.16 feet to a point; thence South 13 degrees 14 minutes 38 seconds West 117.32 feet to a point; thence South 52 degrees 29 minutes 37 seconds East 67.35 feet to a point; thence South 17 degrees 44 minutes 58 seconds East 81.30 feet to a point; thence South 08 degrees 35 minutes 04 seconds West 156.64 feet to a point; thence South 80 degrees 39 minutes 42 seconds West 46.06 feet to a point; thence North 76 degrees 43 minutes 23 seconds West 111.13 feet to a point; thence South 27 degrees 03 minutes 54 seconds West 43.94 feet to a point; thence South 06 degrees 46 minutes 18 seconds West 58.91 feet to a point; thence North 75 degrees 59 minutes 17 seconds West 260.09 feet to a point; thence along a curve to the left an arc distance of 25.04 feet, said curve having a radius of 281.51 feet and being subtended by a chord of 25.03 feet at North 14 degrees 09 minutes 06 seconds East to a point; thence North 16 degrees 42 minutes 00 seconds East 60.00 feet to a point; thence along a curve to the left an arc distance of 315.35 feet, said curve having a radius of 255.56 feet and being subtended by a chord of 295.72 feet at North 18 degrees 39 minutes 00 seconds West to a point; thence North 54 degrees 00 minutes 00 seconds West 532.08 feet to a point; said point being the POINT OF BEGINNING.

Said tract or parcel contains 12.28 acres per boundary survey for Lake Arrowhead POD "F" dated 10/21/08 prepared by Gaskins.

ALSO TOGETHER WITH:

Property Line Description for Lake Arrowhead POD "G"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 232 of the 22nd District, 2nd Section, Cherokee County, Georgia, and being more particularly described as follows:

BEGINNING at intersection of the easterly right of way of Lake Arrowhead Drive (120' Private Road) and the northerly right of way of Country Club Lane (variable R/W); thence along said easterly right of way along a curve to the left an arc distance of 73.76 feet, said curve having a radius of 1060.00 feet and being subtended by a chord of 73.74 feet at North 20 degrees 28 minutes 01 seconds West to a point; thence North 22 degrees 27 minutes 38 seconds West 352.52 feet to a point; thence along a curve to the right an arc distance of 243.30

EXHIBIT "A"

LAND INITIALLY SUBMITTED

feet, said curve having a radius of 340.00 feet and being subtended by a chord of 238.14 feet at North 01 degrees 57 minutes 38 seconds West to a point; thence North 18 degrees 32 minutes 22 seconds East 265.04 feet to a point; thence along a curve to the left an arc distance of 145.91 feet, said curve having a radius of 760.00 feet and being subtended by a chord of 145.69 feet at North 13 degrees 02 minutes 22 seconds East to a point; thence North 07 degrees 32 minutes 22 seconds East 272.63 feet to a point; thence along a curve to the right an arc distance of 184.37 feet, said curve having a radius of 340.00 feet and being subtended by a chord of 182.12 feet at North 23 degrees 04 minutes 27 seconds East to a point; thence leaving said easterly right of way South 46 degrees 30 minutes 02 seconds East 355.42 feet to a point; thence South 54 degrees 00 minutes 00 seconds East 181.47 feet to a point; thence North 36 degrees 00 minutes 00 seconds East 383.80 feet to a point; said point being the POINT OF BEGINNING; thence North 41 degrees 48 minutes 44 seconds East 119.73 feet to a point; thence North 23 degrees 00 minutes 36 seconds East 252.66 feet to a point; thence North 12 degrees 24 minutes 55 seconds East 258.38 feet to a point; thence North 18 degrees 37 minutes 36 seconds West 218.76 feet to a point; thence North 01 degrees 00 minutes 42 seconds West 66.60 feet to a point; thence North 75 degrees 18 minutes 43 seconds East 119.60 feet to a point; thence South 76 degrees 11 minutes 13 seconds East 79.81 feet to a point; thence South 46 degrees 46 minutes 38 seconds East 131.21 feet to a point; thence South 14 degrees 01 minutes 33 seconds East 94.41 feet to a point; thence South 17 degrees 38 minutes 28 seconds West 107.55 feet to a point; thence South 09 degrees 22 minutes 05 seconds East 84.46 feet to a point; thence South 31 degrees 49 minutes 28 seconds East 72.10 feet to a point; thence South 22 degrees 38 minutes 00 seconds East 73.57 feet to a point; thence South 38 degrees 38 minutes 56 seconds East 31.01 feet to a point; thence South 64 degrees 48 minutes 45 seconds East 30.03 feet to a point; thence South 04 degrees 07 minutes 11 seconds East 114.97 feet to a point; thence South 19 degrees 08 minutes 59 seconds West 111.40 feet to a point; thence South 73 degrees 10 minutes 44 seconds West 96.19 feet to a point; thence South 53 degrees 40 minutes 42 seconds West 49.89 feet to a point; thence South 75 degrees 09 minutes 15 seconds West 95.77 feet to a point; thence South 47 degrees 40 minutes 38 seconds West 67.33 feet to a point; thence South 24 degrees 37 minutes 38 seconds West 26.68 feet to a point; thence South 71 degrees 27 minutes 22 seconds West 124.60 feet to a point; thence North 58 degrees 03 minutes 41 seconds West 161.02 feet to a point; said point being the POINT OF BEGINNING.

Said tract or parcel contains 6.64 acres per boundary survey for Lake Arrowhead POD "G" dated 10/21/08 prepared by Gaskins.

ALSO TOGETHER WITH:

Property Line Description for Lake Arrowhead POD "H"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 201, 202, 231, and 232 of the 22nd District, 2nd Section, Cherokee County, Georgia, and being more particularly described as follows:

BEGINNING at intersection of the easterly right of way of Lake Arrowhead Drive (120' Private Road) and the northerly right of way of Country Club Lane (variable R/W); thence along said easterly right of way along a curve to the left an arc distance of 73.76 feet, said curve having a radius of 1060.00 feet and being subtended by a chord of 73.74 feet at North 20 degrees 28 minutes 01 seconds West to a point; thence North 22 degrees 27 minutes 38 seconds West 352.52 feet to a point; said point being the POINT OF BEGINNING; thence along a curve to the right an arc distance of 243.30 feet, said curve having a radius of 340.00 feet and being subtended by a chord of 238.14 feet at North 01 degrees 57 minutes 38 seconds West to a point; thence North 18 degrees 32 minutes 22 seconds East 265.04 feet to a point; thence along a curve to the left an arc distance of 145.91 feet, said curve having a radius of 760.00 feet and being subtended by a chord of 145.69 feet at North 13 degrees 02 minutes 22 seconds East to a point; thence North 07 degrees 32 minutes 22 seconds East 272.63 feet to a point; thence along a curve to the right an arc distance of 96.92 feet, said curve having a radius of 340.00 feet and being subtended by a chord of 96.62 feet at North 15 degrees 42 minutes 22 seconds East to a point; thence along a curve to the left an arc distance of 91.52 feet, said curve having a radius of 211.64 feet and being subtended by a chord of 90.81 feet at South 41 degrees 36 minutes 40 seconds East to a point; thence South 54 degrees 00 minutes 00 seconds East 970.00 feet to a point; thence along a curve to the right an arc distance of 241.31 feet, said curve having a radius of 195.56 feet and being subtended by a chord of 226.29 feet at South 18 degrees 39 minutes 00 seconds East to a point; thence South 16 degrees 42 minutes 00 seconds West 60.00 feet to a point; thence along a curve to the left an arc distance of 288.49 feet, said curve

EXHIBIT "A"

LAND INITIALLY SUBMITTED

having a radius of 341.51 feet and being subtended by a chord of 279.99 feet at South 07 degrees 30 minutes 00 seconds East to a point; thence South 31 degrees 42 minutes 00 seconds East 297.62 feet to a point; thence South 58 degrees 18 minutes 00 seconds West 79.37 feet to a point; thence North 66 degrees 34 minutes 16 seconds West 666.62 feet to a point; thence North 06 degrees 56 minutes 08 seconds East 47.38 feet to a point; thence North 28 degrees 31 minutes 24 seconds West 44.85 feet to a point; thence North 26 degrees 38 minutes 22 seconds West 125.98 feet to a point; thence South 50 degrees 18 minutes 51 seconds West 182.57 feet to a point; thence South 63 degrees 47 minutes 46 seconds West 139.00 feet to a point; thence North 18 degrees 06 minutes 53 seconds West 54.05 feet to a point; thence North 21 degrees 15 minutes 39 seconds West 77.08 feet to a point; thence North 43 degrees 35 minutes 35 seconds West 104.00 feet to a point; thence North 88 degrees 33 minutes 35 seconds West 131.02 feet to a point; said point being the POINT OF BEGINNING.

Said tract or parcel contains 21.27 acres per boundary survey for Lake Arrowhead POD "H" dated 01/06/09 prepared by Gaskins.

ALSO TOGETHER WITH:

Property Line Description for Lake Arrowhead POD "I"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 232 and 237 of the 22nd District, 2nd Section, Cherokee County, Georgia, and being more particularly described as follows:

BEGINNING at intersection of the easterly right of way of Lake Arrowhead Drive (120' Private Road) and the northerly right of way of Country Club Lane (variable R/W); thence along said easterly right of way along a curve to the left an arc distance of 73.76 feet, said curve having a radius of 1060.00 feet and being subtended by a chord of 73.74 feet at North 20 degrees 28 minutes 01 seconds West to a point; thence North 22 degrees 27 minutes 38 seconds West 352.52 feet to a point; thence along a curve to the right an arc distance of 243.30 feet, said curve having a radius of 340.00 feet and being subtended by a chord of 238.14 feet at North 01 degrees 57 minutes 38 seconds West to a point; thence North 18 degrees 32 minutes 22 seconds East 265.04 feet to a point; thence along a curve to the left an arc distance of 145.91 feet, said curve having a radius of 760.00 feet and being subtended by a chord of 145.69 feet at North 13 degrees 02 minutes 22 seconds East to a point; thence North 07 degrees 32 minutes 22 seconds East 272.63 feet to a point; thence along a curve to the right an arc distance of 184.37 feet, said curve having a radius of 340.00 feet and being subtended by a chord of 182.12 feet at North 23 degrees 04 minutes 27 seconds East to a point; thence leaving said easterly right of way South 46 degrees 30 minutes 02 seconds East 355.42 feet to a point; thence South 54 degrees 00 minutes 00 seconds East 383.80 feet to a point; thence North 41 degrees 48 minutes 44 seconds East 119.74 feet to a point; thence North 23 degrees 00 minutes 36 seconds East 252.66 feet to a point; thence North 12 degrees 24 minutes 55 seconds East 258.38 feet to a point; thence North 18 degrees 37 minutes 36 seconds West 218.76 feet to a point; thence North 01 degrees 00 minutes 42 seconds West 66.60 feet to a point; thence North 03 degrees 13 minutes 23 seconds West 263.35 feet to a point; said point being the POINT OF BEGINNING; thence North 06 degrees 32 minutes 40 seconds West 178.37 feet to a point; thence North 02 degrees 55 minutes 48 seconds West 375.60 feet to a point; thence North 09 degrees 42 minutes 25 seconds West 248.26 feet to a point; thence North 20 degrees 48 minutes 21 seconds West 286.17 feet to a point; thence North 69 degrees 09 minutes 49 seconds East 225.84 feet to a point; thence South 59 degrees 42 minutes 15 seconds East 57.53 feet to a point; thence South 26 degrees 20 minutes 45 seconds East 98.60 feet to a point; thence South 01 degrees 31 minutes 45 seconds East 58.20 feet to a point; thence South 17 degrees 25 minutes 27 seconds East 137.27 feet to a point; thence South 04 degrees 48 minutes 38 seconds East 67.49 feet to a point; thence South 22 degrees 25 minutes 43 seconds East 139.47 feet to a point; thence South 01 degrees 41 minutes 20 seconds East 478.22 feet to a point; thence South 08 degrees 46 minutes 30 seconds West 122.47 feet to a point; thence South 72 degrees 47 minutes 57 seconds West 115.81 feet to a point; thence South 85 degrees 17 minutes 49 seconds West 108.13 feet to a point; said point being the POINT OF BEGINNING.

Said tract or parcel contains 6.56 acres per boundary survey for Lake Arrowhead POD "I" dated 10/21/08 prepared by Gaskins.

EXHIBIT "A"

LAND INITIALLY SUBMITTED

ALSO TOGETHER WITH:

Those easement rights in Grantor contained in that certain Access and Utility Easement from Purcell Co., Inc., to Grantor dated 1-8-09, and recorded on 1-13-09, at Deed Book 10467, Page 110, Cherokee County Georgia Records.

EXHIBIT "B"

INITIAL USE RESTRICTIONS

The purpose of the Design Guidelines and these Use Restrictions is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities which fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IV of this Clearwater Declaration, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not to enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one (1) Lot under one set of circumstances; the same thing may be disapproved for another Lot under a different set of circumstances. The exercise of discretion in approval or enforcement shall neither be construed as a waiver of approval or enforcement rights, nor shall it estop the Board from taking enforcement action in any appropriate circumstances.

Subject to the above, the following restrictions shall apply to all of the Community until such time as they are amended, modified, repealed or limited pursuant to Article III of this Clearwater Declaration.

(a) General. When used in these Use Restrictions, the phrase "Visible from Neighboring Property" shall mean, with respect to any given object, that the object is or would be visible to a six-foot (6') tall person standing at ground level on any part of the neighboring property at an elevation no greater than the elevation of the base of the object being viewed, except where the object is visible solely through a view fence and would not be visible if the view fence were a solid fence.

(b) Animals and Pets. No animal of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Community, except that for each Dwelling there shall be permitted a reasonable number of usual and common household pets, as determined in the Board's discretion. Pets which are permitted to roam free, or, in the Association's sole discretion, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners or residents of any portion of the Community shall be removed upon the Board's request at the Owners' expense. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner's expense. No pets shall be kept, bred, or maintained for any commercial purpose. In addition, each Owner shall be required to remove and dispose of all fecal matter from his or her pet in all areas of the Community outside of an Owner's Lot. No Owner shall permit any pet to continue excessive barking or noise, which shall be barking continuously for more than twenty (20) minutes at a time.

(c) Wildlife. Capturing, killing, or trapping wildlife is prohibited within the Community, except for trained professionals in circumstances imposing an imminent threat to the safety of Persons or pets.

(d) Firearms or Other Weapons. The carrying, use or discharge of firearms or other weapons within the Community is prohibited. The term "firearms or other weapons" includes, but is not limited to, "B-B" guns, pellet guns, knives, swords, cross-bows and other firearms or other weapons of all types, regardless of size.

(e) Nuisances. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife or air quality within the Community or which results in unreasonable levels of sound or light pollution.

(f) Garages and Driveways. Garage doors shall remain closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons. The interior of all garages shall be maintained in a neat, clean and slightly condition. Garages shall be used only for parking vehicles and storage, and shall not be used or converted for living quarters or recreational activities.

(g) Storage of Goods. Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Association), or, if not, in active use, any portion of a Lot which is visible from outside the Lot is prohibited. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Parcel, except: (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction or modification) of

EXHIBIT "B"

INITIAL USE RESTRICTIONS

a building, appurtenant structures or other Improvements; and (ii) that which Declarant or Association may permit or require for the development, operation and maintenance of the Community.

(h) Prohibited Conditions. The following conditions, structures, or activities are prohibited on any Lot.

(i) Dog runs and animals pens of any kind, if such structures are Visible from Neighboring Property;

(ii) Shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of improvements within the Community. Temporary structures used during the construction or repair of a Dwelling or other improvements shall be removed immediately after the completion of construction or repair;

(iii) Permanent sport goals, basketball standards, backboards or similar structure or device which are or would be Visible from Neighboring Property; provided, however, portable sport goals may be used on a Lot without prior approval, but must be stored so as not to be Visible from Neighboring Property overnight or otherwise when not in use. No swing sets or other play structures shall be placed or constructed on any Lot without the prior approval of the Architectural Review Committee (including, without limitation, approval as to appearance and location);

(iv) Freestanding flagpoles; provided, however, flags may be displayed using a bracket or other approved device mounted to the Dwelling so long as the size of the flag displayed does not exceed that of a standard United States flag (as determined in the Board's discretion and as may be set forth in a Board rule);

(v) Statues, lawn ornaments and yard decorations of any size or type must be placed so as not to be Visible from Neighboring Property; and

(vi) Outside clotheslines or other outside facilities for drying or airing clothes.

In any event and notwithstanding the above list of prohibited conditions, as set forth in Article IV, any structure, improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval unless otherwise specifically exempt under the Design Guidelines.

(i) Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the Occupants and invitees of other Lots. In addition, no noxious, illegal, or offensive activity shall be carried on upon any portion of the Community, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the Occupants and invitees of other Lots.

(j) Holiday Decorations. Owners may display holiday decorations located or visible from outside their Dwelling if the decorations are of the kinds normally displayed in single family residential neighborhoods, are of reasonable size and scope, and do not disturb other Owners and Occupants by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed in season only from November 1 to January 31 and, during other times of the year, from one (1) week before to one (1) week after any nationally recognized holiday.

(k) Antennas and Satellite Dishes. No antenna, satellite dish, or other device of the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the Dwelling, except those devices whose installation and use is protected under federal law or regulations (generally, certain antennae under one meter in diameter). Notwithstanding such protection, an application for such an antenna or other device must be submitted to the Architectural Review Committee for approval and approval will be granted only if:

(i) First, the antenna or other device is designed for minimal visual intrusion (i.e., is located in a manner that minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and

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INITIAL USE RESTRICTIONS

(ii) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (*i.e.*, without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

(iii) One satellite dish antenna measuring one (1) meter or less in diameter may be erected on any Lot. Owners are encouraged to place any satellite dish antenna in the back yard, below the wall level, if reception is available at that location. If not, then placement should be on the back or side of the house below the roofline, if reception is available at that location. If an acceptable signal is not available in either of those locations, then placement may be above the roofline or in the front of the house. Any front of house or front yard installation should be screened from view. If the installation of a satellite dish antenna meets the foregoing requirements, no ARC approval is required. However, Owners are encouraged to obtain ARC approval before any installation, but to avoid undue delay; residents may request ARC approval within ten (10) days following an installation.

The Architectural Review Committee shall consider any such application on an expedited basis.

(l) Trash Containers and Collection. No garbage or trash, compost piles or containers shall be placed or kept on any Lot, except in covered containers of a type, size and style which are pre-approved by the ARC or specifically permitted under the Design Guidelines, or as required by the applicable governing jurisdiction. Such containers shall not be Visible from Neighboring Property except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(m) Pool Equipment. All pool equipment stored on any Lot shall be screened so as to be neither Visible from Neighboring Property nor able to be seen through any view fence.

(n) Unightly or Unkempt Conditions. All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate within, upon, or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Community.

Woodpiles or other material shall be stored in a manner so as not to be Visible from Neighboring Property and shall be guarded from infestation by rodents, snakes, and other animals and to minimize the potential danger from fires. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Community. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace.

(o) Vehicles and Parking. The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans and recreational vehicles.

No vehicles may be left upon any portion of the Community except in a garage, driveway, or other area designated by the Board. No person shall park any recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, stored vehicles, and unlicensed vehicles or inoperable vehicles within the Community other than in enclosed garages. This Section shall not apply to emergency vehicle repairs.

Notwithstanding the above, for purposes of cleaning, loading, unloading and short term parking, recreational vehicles not to exceed fifteen feet (15') may be parked on the Lot's driveway for a period not

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exceeding seventy-two (72) hours and no more frequently than every thirty (30) days. Owners must obtain a recreational vehicle permit for such short term parking from the Board of Directors or its assigns.

(p) Wetlands, Lakes and Other Water Bodies. All wetlands, lakes, ponds, streams, or other bodies of water within or adjacent to the Community, if any, shall be aesthetic amenities only, and no other active use of lakes, ponds, streams, or other bodies of water within or adjacent to the Community is permitted, unless authorized under the Master Declaration and/or any rules and regulations adopted by Purcell, as the owner of the Club, or the LAYCC. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to the Community.

(q) Solar Equipment. No solar heating equipment or device is permitted outside the Dwelling except such devices whose installation and use is protected by federal or Georgia law. Notwithstanding such protection, an application for such equipment or device must be submitted for approval under Article IV prior to installation and approval will be granted only if:

(i) First, such equipment or device is designed for minimal visual intrusion when installed (i.e. is located in a manner which minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and

(ii) Second, the equipment or device complies to the maximum extent feasible with the Design Guidelines within the confines of the applicable governmental regulations.

(r) Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Dwelling or other building so as to be Visible From Neighboring Property.

(s) Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot or Parcel unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot or Parcel of an aboveground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace or a spa or "hot tub," so long as any such tank either: (a) has a capacity of ten (10) gallons or less; or (b) is appropriately stored, used and/or screened, in accordance with the Design Guidelines or as to otherwise approved by the Architectural Review Committee, so as not to be Visible from Neighboring Property.

EXHIBIT "C"

BY-LAWS

OF

CLEARWATER AT LAKE ARROWHEAD HOMEOWNERS ASSOCIATION, INC.

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BY-LAWS
OF
CLEARWATER AT LAKE ARROWHEAD HOMEOWNERS ASSOCIATION, INC.

ARTICLE 1. GENERAL

Section 1.1. Name and Applicability. The name of the corporation is Clearwater at Lake Arrowhead Homeowners Association, Inc. ("Association"), a Georgia nonprofit corporation organized in accordance with the Association's Articles of Incorporation filed with the Georgia Secretary of State (as may be amended, the "Articles of Incorporation"), and the Declaration of Covenants, Conditions, and Restrictions for Clearwater at Lake Arrowhead (Pods F, G, H, and I) recorded in the Cherokee County, Georgia land records (as may be amended, the "Declaration").

Section 1.2. Definitions. The term "Georgia Nonprofit Corporate Code" as used herein shall mean the Georgia Nonprofit Corporation Code, O.C.G.A. 14-3-101, *et seq.*, as amended. The other capitalized terms used herein that are not defined herein shall have the meanings specified in the Declaration. All terms not defined herein or in the Declaration shall have their generally accepted meanings.

Section 1.3. Membership. The Association shall have two (2) classes of Membership: Owner Membership and Declarant (collectively the "Members"), as more specifically set forth in Section 6.2 of the Declaration. Provisions of the Declaration pertaining to Membership are incorporated herein by this reference. An Owner of a Lot shall automatically become a "Member" of the Association upon taking title to the Lot and shall remain a Member for the entire period of ownership. As may be more fully provided below, an Owner's spouse or Domestic Partner may exercise the powers and privileges of the Member. If title to a Lot is held by more than one (1) Person, the Membership shall be shared in the same proportion as the title, but there shall be only one (1) Membership and one (1) equal vote per Lot. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's Membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

Section 1.4. Entity Members. In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, representative, or other designated agent of such entity shall be eligible to represent such entity in the affairs of the Association, including, without limitation, serving on the Board of Directors of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Member, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy shall be filled in accordance with these By-Laws.

Section 1.5. Voting. Each Lot shall be entitled to one (1) equal vote, which vote may be cast by the Member, the Member's spouse or Domestic Partner, or by a lawful proxy as provided below. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. If only one (1) co-owner attempts to cast the vote for a Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted. No Member shall be eligible to vote, either in person or by proxy, or to act as a proxy for any other Member if that Member is shown on

the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Member has had its voting rights suspended for the infraction of any provision of the Declaration, these By-Laws, or any rule of the Association. If the voting rights of a Member have been suspended, that Member shall not be counted as an eligible vote for purposes of establishing a majority or a quorum.

Section 1.6. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Members, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, Members, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" means more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these By-Laws, all decisions shall be by majority vote.

Section 1.7. Purpose. The Association shall have the responsibility of administering the Community, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Common Areas and performing all of the other acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

Section 1.8. Electronic Documents and Electronic Signatures. All Electronic Documents and Electronic Signatures (as such terms are defined in the Georgia Electronic Records and Signatures Act, O.C.G.A. 10-12-1, *et seq.*) shall be governed by the Georgia Electronic Records and Signatures Act.

(a) Electronic Documents. Whenever these By-Laws require that a document, record or instrument be "written" or "in writing," the requirement is deemed satisfied by an Electronic Document.

(b) Electronic Signatures. Whenever these By-Laws require a signature, an Electronic Signature satisfies that requirement only if: (i) the signature is easily recognizable as a Secure Electronic Signature which is capable of verification, under the sole control of the signatory, and attached to the electronic document in such a way that the document cannot be modified without invalidating the signature; or (ii) the Board reasonably believes that the signatory affixed the signature with the intent to sign the Electronic Document, and that the Electronic Document has not been modified since the signature was affixed.

(c) Verification and Liability for Falsification. The Board may require reasonable verification of any Electronic Signature or Electronic Document. Pending verification, the Board may refuse to accept any Electronic Signature or Electronic Document that, in the Board's sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any Member or any other Person for accepting or acting in reliance upon an Electronic Signature or Electronic Document that the Board reasonably believes to be authentic. Any Member or Person who negligently, recklessly or intentionally submits any falsified Electronic Document or an unauthorized Electronic Signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees and expenses that are incurred as a result of such acts.

ARTICLE 2. MEETINGS OF MEMBERS

Section 2.1. Annual Meetings. The regular annual meeting of the Members shall be held during the 60-day period immediately preceding the last day of each fiscal year, with the date, hour, and place to be set by the Board of Directors. No annual meeting of the Association shall be set on a legal holiday. At the annual meeting, comprehensive reports of the affairs, finances, and budget projections of the Association shall be made to the Members.

Section 2.2. Special Meetings. Special meetings of the Members may be called for any purpose at any time by the President or Secretary, by request of any two (2) members of the Board of Directors, or upon written petition of Members holding at least twenty-five percent (25%) of the eligible Member votes in the Association. Any such written petition by the Members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of Members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then call a special meeting for the purpose stated in the petition, and the Secretary shall send, within thirty (30) days after the date the petition is submitted to the Secretary, notice of the meeting in accordance with these By-Laws. If notice is not given within such time period, any person signing the petition may set the time and place of the meeting and give notice of the meeting in accordance with these By-Laws. Only those matters that are within the purpose or purposes described in the meeting notice may be conducted at the special meeting unless objection thereto is waived as set forth below.

Section 2.3. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to the record Owner of each Lot or to the Lots a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice shall be delivered personally, sent by United States mail, postage prepaid, statutory overnight delivery, or issued electronically in accordance with the Georgia Nonprofit Corporate Code to all Members at such address or addresses as any of them may have designated in writing to the Secretary or, if no other address has been so designated, at the address of their respective Lots. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 2.4. Waiver of Notice. A Member may, in writing or by electronic transmission, waive notice of any meeting of the Members, either before or after such meeting. A Member's attendance at a meeting (in person or by proxy) waives objection to lack of notice or defective notice of the meeting unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting. A Member's attendance at a meeting further waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

Section 2.5. Quorum. A quorum is composed of those Members attending a meeting or voting on a matter in person or by proxy, provided that, unless thirty percent (30%) or more of the eligible Member votes in the Association is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of Members are those matters that are described in the meeting notice. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is concluded and shall not need to be reestablished. Unless the Declaration, the Georgia Nonprofit Corporate Code, the Articles of Incorporation or these By-Laws require a greater vote, if a quorum is present, the affirmative vote of a majority of the votes cast is the act of the Members.

Section 2.6. Adjournment. Any meeting of the Members may be adjourned from time to time for periods not exceeding ten (10) days by vote of the Members holding the majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business that could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

Section 2.7. Proxy. Any Member entitled to vote may do so by written proxy duly executed by the Member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail, facsimile transmission, or by an electronic transmission valid under the Georgia Nonprofit Corporate Code to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Secretary, except that: (a) the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting; and (b) a later dated proxy shall automatically be deemed to

invalidate any previously given proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 2.8. Action Taken Without a Meeting. In the Board's discretion, any action that may be taken by the Members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every Member entitled to vote on the matter. The Board may deliver ballots and consent forms by personal delivery, U.S. Mail, facsimile transmission, e-mail, or other electronic transmission. Members shall deliver their vote by ballot or consent form by whatever means is specified by the Board.

(a) Ballot. A written ballot shall set forth each proposed action, and provide an opportunity to vote for or against each proposed action. Approval by ballot pursuant hereto shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of directors; and (iii) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) Written Consent. Approval by written consent shall be valid only when the number of written consents setting forth the actions taken is received and equals or exceeds the requisite majority of the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by Declarant, if required. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the Members is approved by written consent hereunder, the Board shall issue written notice of such approval to all Members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration or By-Laws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

Section 2.9. Membership List. After fixing a record date for a meeting, the Association shall prepare an alphabetical list of the names of all Members who are entitled to notice of the meeting. The list must show the address of each Member entitled to vote at the meeting. The list of Members must be available for inspection by any Member for the purpose of communication with other Members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, as provided further in the Georgia Nonprofit Corporate Code. This list shall not be used to solicit money or property unless such money or property will be used solely to solicit the votes of the Members in an election to be held for the Association; nor shall the list be used for commercial purposes, sold to or purchased by any Person.

Section 2.10. Order of Business. The President shall establish the agenda for, and preside at, and the Secretary shall keep the minutes of, all Membership meetings. The Board of Directors may establish rules of conduct and the order of business for all Membership meetings. When not in conflict with the Declaration, these By-Laws, the Articles of Incorporation or meeting procedures adopted by the Board of Directors, Robert's Rule of Order (latest editions) shall govern all Membership meetings. The Board may order the removal of anyone attending a Membership meeting who, in the opinion of the Board disrupts the conduct of business at such meeting.

ARTICLE 3. BOARD OF DIRECTORS

Section 3.1. Composition and Eligibility. The affairs of the Association shall be governed by a Board of Directors. Except for directors appointed by Declarant hereunder, the directors shall be Members or spouses or Domestic Partners of such Members; provided, however, no Member and his or her spouse or Domestic Partner may serve on the Board at the same time, and no co-owners may serve

on the Board at the same time. No persons shall be eligible to be elected to or continue to serve on the Board of Directors if they are shown on the books and records of the Association to be more than thirty (30) days delinquent in the payment of any assessment or charge by the Association.

Section 3.2. Directors Appointed by Declarant. Notwithstanding anything to the contrary herein, during the Declarant Control Period, Declarant shall have the exclusive right to appoint, remove, and replace a member or members of the Board of Directors, with or without cause. The directors appointed by Declarant need not be Members or residents of the Community.

Section 3.3. Number of Directors and Term of Office. During the Declarant Control Period, the Board shall consist of at least one (1) but not more than three (3) directors, the exact number of which shall be determined by Declarant from time to time. After termination of the Declarant Control Period, the Association shall call a meeting to be held at which the Members shall elect three (3) directors. If such meeting is not the annual meeting, the directors elected shall serve until the next annual meeting. At the first annual meeting after the expiration of the Declarant Control Period, the two (2) directors receiving the highest number of votes shall be elected for terms of two (2) years each and the remaining director shall be elected for a term of one (1) year. At each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Section 3.4. Removal of Members of the Board of Directors. After expiration of the Declarant Control Period, at any annual or special meeting of the Association duly called, any one (1) or more Board members, except for directors appointed by Declarant hereunder, may be removed with or without cause by a majority of the eligible Member votes in the Association and a successor may then and there be elected to fill the vacancy thus created. Further, any director who is more than thirty (30) days past due in the payment of any assessment or charge shall be automatically removed from the Board of Directors, even if the director subsequently pays the amount owed, and the vacancy shall be filled as provided in Section 3.5 below. Any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings may be removed by the vote of a majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 3.5. Vacancies. Vacancies in the Board caused by any reason, except the removal of a director by a majority of the eligible Member votes in the Association or by Declarant, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so selected shall hold office until the next annual meeting. Notwithstanding anything to the contrary herein, any director who is an officer, director or other designated agent of an entity member and whose position becomes vacant for any reason, may be replaced by the entity who is the Member unless there has been a transfer of ownership of the Lot, in which case, the vacancy shall be filled by the remaining directors, even if less than a quorum at any meeting of the directors.

Section 3.6. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a majority of the eligible Member votes in the Association. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed, not to exceed a value of One Hundred Dollars (\$100) per fiscal year. For purposes hereof, reasonable food and beverages purchased for Board meeting shall not be considered compensation.

Section 3.7. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall

not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed but shall not be entitled to discuss the proposed contract during the discussion. Notwithstanding anything herein, the directors, during the Declarant Control Period, shall be authorized on behalf of the Association to enter into contracts with the Declarant and its affiliates.

Section 3.8. Nominations and Declarations of Candidacy. The Board of Directors shall prescribe the opening date and the closing date of a reasonable filing period in which all eligible Members who have an interest in serving as a director may file as a candidate for such positions. The Board of Directors shall also have the right to establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Each candidate shall be given a reasonable, uniform opportunity to communicate his qualifications to the Members and to solicit votes.

Section 3.9. Elections. All Members that are eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board members shall be by written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

Section 3.10. Regular Board Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every six (6) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the Membership. Notwithstanding the foregoing, during the Declarant Control Period, the Board shall not be required to hold regular meetings.

Section 3.11. Special Board Meetings. Special meetings of the Board may be called by the President on two (2) days notice to each director given by regular first class or electronic mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 3.12. Waiver of Notice. Any director may, at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

Section 3.13. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. A majority of directors shall constitute a quorum for the transaction of business. One (1) or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

Section 3.14. Open Meetings. Board meetings need not be open to all Members. However, if the Board permits Members to attend Board meetings, then Members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. The Board may order the removal of any meeting guest who, in the Board's opinion, either disrupts the conduct of business at the meeting or fails to leave the meeting upon request after an announcement of reconvening in executive session.

Section 3.15. Action Without a Meeting. Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a majority of the directors consent to such action in writing, sent via hand delivery, regular first class, electronic mail, or facsimile. Such consents must describe the action taken and be signed by no fewer than a majority of the directors and such consents shall be filed with the minutes of the Board of Directors.

Section 3.16. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all of the powers conferred upon nonprofit corporations by common law, the statutes of the State of Georgia in effect from time to time, and all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in the Articles of Incorporation, these By-Laws, the Declaration, or the Georgia Nonprofit Corporate Code. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following, in the way of explanation, but not limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Member's share of the Common Expenses;

(b) designating assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing installment payments for the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of the Common Areas as more particularly described in the Declaration;

(d) designating, hiring, and dismissing the personnel necessary for the operation and upkeep of the Common Areas and supervising the personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. §14-3-302, and using the proceeds to administer the Association;

(f) making, establishing, abolishing, amending, and enforcing reasonable rules and regulations and imposing sanctions for violations of the Declaration, these By-Laws and the rules and regulations including, without limitation, monetary fines as more specifically set forth in the Declaration and these By-Laws;

(g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Areas in accordance with the other provisions of the Declaration and these By-Laws, after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the costs of all services rendered to the Association or its Members and not directly chargeable to specific Members;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(m) contracting with any Person for the performance of various duties and functions, including but not limited to management companies, legal and accounting services. The Board of Directors shall have the power to enter into common management agreements with other Persons. Any and all functions of the Association shall be fully transferable by the Board of Directors, in whole or in part, to any other entity.

Section 3.17. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract by the Association with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year.

Section 3.18. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration, or improvement of the Common Areas, and for other purposes, with the approval of a majority of the eligible Member votes in the Association.

Section 3.19. Liability and Indemnification of Officers, Directors and Committee Members. The Association shall indemnify every officer, director, and committee member (including directors, officers, and committee members appointed by Declarant during the Declarant Control Period) against any and all expenses, including reasonable attorneys' fees and expenses that are incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association, in determining whether to indemnify a director, officer or committee member, shall not impute knowledge to said director, officer or committee member from any source whatsoever; rather, any such determination shall be based on the actual knowledge of the director, officer or committee member. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors and committee members may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director or committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer or director may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

Section 3.20. Committees. The Board may establish an Architectural Review Committee for the purpose of establishing and maintaining architectural standards in the Community as provided in the Declaration and such other committees as the Board determines with the powers and duties that the Board shall authorize. Unless otherwise provided in these By-Laws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

ARTICLE 4. OFFICERS

Section 4.1. Designation. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all or any of which may be the same person. A Vice President may be elected at the discretion of the Board.

Section 4.2. Election of Officers. The Association officers shall be elected annually by the Board at the first Board meeting following each annual meeting of the Members and shall hold office at the pleasure of the Board and until a successor is elected.

Section 4.3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4.4. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 4.5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the Members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 4.6. Vice President. The Vice President, if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 4.7. Secretary. The Secretary shall keep the minutes of all meetings of the Members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

Section 4.8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 4.9. Other Officers. Other offices may be created by the Board, and the Board members that hold such offices shall have such titles and duties as are defined by the Board.

Section 4.10. Agreements, Contracts, Deeds, Leases, Etc. Except during the Declarant Control Period, all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors. During the Declarant Control Period all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least one (1) officer or by such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE 5. RULE MAKING AND ENFORCEMENT

Section 5.1. Authority and Enforcement. The Community shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify,

repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Lots and the Common Areas, provided that copies of all such rules and regulations shall be furnished to all Members and Occupants. Any such rules and regulations may be repealed by the affirmative vote or written consent of a majority of the eligible Member votes in the Association and the consent of Declarant during the Declarant Control Period, at an annual or special meeting of the Membership. Every Member and Occupant shall comply with the Governing Documents, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one (1) or more aggrieved Members, to take action to enforce the terms of the Governing Documents.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Member's Lot, and to suspend a Member's right to vote or to use the Common Areas for violation of any duty imposed under the Governing Documents; provided, however, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Lot. In the event that any Occupant of a Lot violates the Governing Documents and a fine is imposed, notice of such violation shall be sent to the Member and Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Member shall pay the fine upon notice from the Association, and the fine shall be an assessment and a lien against the Lot until paid. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 5.2. Fining and Suspension Procedure. The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Common Areas (provided, however, if an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association, suspension of the right to vote and the right to use the Common Areas shall be automatic) unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (b) below.

(a) Notice. If any provision of the Governing Documents is violated, the Board shall send the violator written notice identifying the violation and fine(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or fine(s) or to request reconsideration of the fine(s). Fine(s) may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

ARTICLE 6. ASSESSMENTS AND ENFORCEMENT

Section 6.1. Authority and Enforcement. The Board of Directors shall have the authority to levy and collect reasonable assessments governing the Community as provided for in the Declaration. All sums lawfully assessed by the Association against any Lot and the Member thereof, together with interest thereon and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of such Member and constitute a continuing lien in favor of the Association on such Lot.

The failure of the Board of Directors to fix the assessment amounts or to deliver to each Member the assessment notice and budget shall not be deemed a waiver, modification or release of any Member of the obligation to pay assessments. In such event, each Member shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 6.2. Fining Procedure. If a Member is shown on the books of the Association to be delinquent in any assessment due the Association, imposition of a late fee in the amount due shall be assessed against such Lot and the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, plus the late fee, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All other lien rights and remedies available to the Association shall be binding on the Member if delinquent in the payment of his/her assessments. The Member's right to vote and the Member's right to use the Common Areas shall automatically be suspended for any assessments which are overdue by thirty (30) days or longer.

A late notice may be sent to a Member who has not paid assessments or late fees in full as more specifically set forth in the Declaration. The late notice may warn the Member that the account will be accelerated. If the assessment remains unpaid, the Association may institute suit to collect the debt and foreclose its lien as more specifically set forth in the Declaration. Non-receipt of such notice does not relieve the Member of Member's financial obligation to pay the costs of collection accrued by the Association for the satisfaction of the delinquent debt, including, but not limited to the late fees, interest, all costs of collections, including the costs of filing any liens against the delinquent property and costs of filing a civil suit for collection and reasonable attorneys' fees and expenses that are incurred.

If the Association receives from any Member, in any accounting year, two (2) or more checks returned for insufficient funds for payment of assessments or other charges, the Board may require all future payments to be made by certified check, cashier's check or money order for the remainder of the fiscal year.

Payments received shall be credited in the following order to the fullest extent allowed by the law:

- (a) to cover nonsufficient funds ("NSF") charges and reasonable attorneys' fees and expenses that are incurred in connection therewith;
- (b) to cover late charge;
- (c) to cover interest;
- (d) to cover delinquent or past due assessments, with longest outstanding assessments being paid first; and
- (e) to cover current assessments to include: initiation fee/capital contribution.

Failure of the Association to follow any of the procedures set forth herein or in the Declaration shall not excuse any Member from its obligation to pay all assessments, interest, charges and costs, including reasonable attorneys' fees and expenses that are incurred, due in a timely manner, nor shall failure constitute a waiver, modification or release of the Association's right to collect all assessments, costs, including reasonable attorneys' fees and expenses that are incurred, charges and interest due to the Association.

Section 6.3. Suspension of Utilities. In addition to the remedies herein, the Board of Directors may suspend a Member's right (and that of an Occupant's) to the use of utilities controlled by the Association whether or not actually provided by the Association or by a third party on the Association's behalf, including without limitation, electricity, water or gas until delinquent assessments and all related charges, including any applicable reasonable attorneys' fees and expenses that are

incurred, are paid in full. Prior to the imposition of any such suspension, the delinquent Member shall be sent notification that such utilities will be disconnected for non-payment and that Member will have an opportunity to be heard before the Board of Directors or such committee the Board of Directors may establish to hear such cases. No such suspension shall be imposed in a manner that will endanger the health, safety or property of any Member or Occupant.

ARTICLE 7. ADDITIONAL REMEDIES AND ENFORCEMENT RIGHTS

Section 7.1. Self-Help. Notwithstanding anything to the contrary herein contained, the Board of Directors may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing, booting or other means of handling vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedures set forth in Articles 5 and 6. In any such action, to the maximum extent permissible, the Member or Occupant responsible for the violation for which abatement is sought shall be responsible for reasonable attorneys' fees and expenses that are incurred or other costs actually incurred.

Section 7.2. Rights of Entry and Removal. The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Areas to abate or remove any structure, thing or condition which violates the Declaration, the By-Laws, or the rules and regulations, using such force as may be reasonably necessary; provided, however, written notice shall be given to the Member of the Lot at least two (2) days prior to the time that any items of construction are altered or demolished; provided further that in the event that an emergency exists in which the abatement or removal is immediately required, the abatement or removal may be carried out without such notice, and the Association shall give such notice as soon thereafter as is reasonably possible, but in no event later than such timeframes as set forth in the Declaration. All costs of self-help, including reasonable attorneys' fees and expenses that are incurred, shall be assessed against the violating Member and shall be collected as provided herein for the collection of assessments.

Section 7.3. Remedies Cumulative. Nothing herein shall in anyway limit the remedies available to the Association. All remedies herein shall be deemed cumulative of those set forth in the Declaration of the Association and of those otherwise available at law or in equity.

ARTICLE 8. MISCELLANEOUS

Section 8.1. Notices.

(a) Method of Giving Notice. Unless otherwise prohibited in these By-Laws, all notices, demands, bills, statements, or other communications shall be in writing and shall be given via:

- (i) Personal delivery to the addressee; or
- (ii) United States mail, first class, postage prepaid; or
- (iii) Electronic mail; or
- (iv) Facsimile; or
- (v) A secure web site, provided that notice shall be deemed given via web site only upon proof that the addressee has retrieved the message.

(b) Addressee. Notice sent by one of the methods described in subsection (a) above shall be deemed to have been duly given:

(i) If to an Owner, at the address, electronic mail address or facsimile number which the Member has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot of such Member;

(ii) If to an Occupant, at the address, electronic mail address or facsimile number which the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Lot occupied; or

(iii) If to the Association, the Board or the managing agent, at the postal address, facsimile or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary. The Secretary shall promptly provide notice to all Members of any such change in address.

Section 8.2. Severability. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these By-Laws or the Declaration.

Section 8.3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision thereof.

Section 8.4. Gender and Grammar. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 8.5. Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise set forth by Board resolution.

Section 8.6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board and a financial statement prepared. However, after having received the Board's financial statement review at the annual meeting, the Members may, by a majority of the eligible Member votes in the Association, require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Lot upon submission of a written request and must be available within one hundred twenty (120) days of the Association's fiscal year end. If an audited financial statement by an independent accountant is not required, a mortgage holder may have an audited statement prepared at its own expense.

Section 8.7. Conflicts. The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these By-Laws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Declaration, these By-Laws, or the Articles of Incorporation, then the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these By-Laws, in that order, shall prevail, and each Member of a Lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 8.8. Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or By-Laws, in which case such higher vote shall be necessary to amend, these By-Laws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Members holding two-thirds (2/3) of the eligible Member votes in the Association. During the Development Period, any amendment to these By-Laws shall also require the written consent of Declarant. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

Section 8.9. Books and Records. Right to Inspect. All Members and Eligible Mortgagees shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) business days before the date on which the Member or Eligible Mortgagee wishes to inspect and copy:

- (i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (ii) its By-Laws or restated By-Laws and all amendments to them currently in effect;
- (iii) its Declarations or restated Declarations and all amendments to them currently in effect;
- (iv) any and all resolutions adopted by either its Members or the Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class or category of Members;
- (v) any rules governing the Association;
- (vi) any books, records or financial statements of the Association;
- (vii) the minutes of all meetings of Members and records of all actions approved by the Members for the past three (3) years;
- (viii) all written communications to Members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;
- (ix) a list of the names and business or home addresses of its current direct officers;
and
- (x) its most recent annual registration delivered to the Secretary of State of Georgia.

(b) Inspection. A Member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the Member wishes to inspect and copy only if the Member's demand is made in good faith and for a proper purpose that is reasonably relevant to the Member's legitimate interest as a Member; the Member describes with reasonable particularity the purpose and the records the Member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

- (i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the Members, and records of action taken by the Members or the Board without a meeting, to the extent not subject to inspection under Section 8.9(a) above;
- (ii) accounting records of the Association; and
- (iii) the Membership list only if for a purpose related to the Member's interest as a Member of the Association. Without the consent of the Board, a Membership list or any part thereof may not be: (A) used to solicit money or property unless such money or property will be

used solely to solicit the votes of the Members in an election to be held by the Association; (B) used for any commercial purpose; or (C) sold to or purchased by any Person.

Notwithstanding anything to the contrary, the Board may limit or preclude Member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other Members. Minutes for any Board or Association meetings do not become effective and an official Association record until approved by the Board or Membership, as applicable, at a subsequent meeting.

(c) Costs Related to Inspection. The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member or Eligible Mortgagee in accordance with this Section.