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

**FOR**

**INDEPENDENCE**

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

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** is made this 9th day of February, 2007, by **HORSE CREEK PARTNERS, LLC**, a Georgia limited liability company ("Declarant").

**Article I      Creation of the Community**

1.1.    Purpose and Intent.

By recording this Declaration in the Public Records, Declarant and the Declarant Affiliates, if any, identified on the signature pages of this Declaration, intend to establish a general plan of development for a portion of the properties within the planned community known as Independence located in Hinesville, Georgia, which portion may consist of a variety of residential and commercial land uses. An integral part of the development plan for such property is the creation of the Independence Property Owner's Association, Inc., a non-profit corporation whose membership is comprised of all owners of real property submitted to this Declaration (the "Association"), to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

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

1.2.    Binding Effect.

This Declaration shall constitute a covenant running with the title to all property described in Exhibit "A." In addition, upon recording a Supplemental Declaration in accordance with the provisions hereof, this Declaration shall also constitute a covenant running with the title to such portions of the property described on Exhibit "B" as are submitted to the terms of this Declaration by such Supplemental Declaration. All such property described on Exhibit "A" to this Declaration or submitted by any Supplemental Declaration (collectively, the "Properties"), shall be owned, conveyed and used subject to the provisions of this Declaration, which shall be binding upon and enforceable by all Persons now or hereafter having any right, title, or interest in any portion of the Properties, and their heirs, successors, successors-in-title, and assigns. In addition, this Declaration shall be enforceable by Declarant, the Association, their respective legal representatives, successors, and assigns, whether or not such entities hold any interest in any portion of the Properties.

This Declaration is intended to, and unless specifically limited by Georgia law, shall have perpetual duration. However, so long as Georgia law limits the period during which covenants may

run with the land, this Declaration shall remain in effect for a term of 20 years from the date it is Recorded subject to any amendments which may be adopted during such period in accordance with the procedures described in this Declaration. After such time, this Declaration shall be extended automatically for successive periods of 20 years each, unless an instrument signed by 67% of the then Owners is recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case this Declaration shall terminate as of the date specified in such instrument.

Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Georgia law prohibiting covenants from extending more than 21 years beyond the death of a person identified in such covenant who is living at the time such covenant is made, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

Independence's Governing Documents consist of:

- this Declaration and any Recorded Supplemental Declarations;
- the Association's Articles of Incorporation and By-Laws;
- the Architectural Guidelines described in Article IV;
- the Restrictions and Rules described in Article III; and
- the Association's Board of Directors' resolutions,

all as they may be amended.

Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and in such case the more restrictive shall control. The Association may, but shall not be required to, enforce any such additional covenants or restrictions affecting any portion of the Properties.

Some Parcels within Independence may be subject to additional covenants, restrictions, and easements, which the Association or a Parcel Association may administer. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of any such Parcel Association, the Governing Documents shall control.

The Governing Documents apply to all Owners and occupants of property within Independence, as well as to their respective tenants, guests, and invitees. Any lease on a Unit shall

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provide that the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. The Association may, but shall not be required to, enforce any such additional covenants or restrictions affecting any portion of the properties

If any court should determine that any provision of this 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.

## Article II Concepts and 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 set forth below.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles": The Articles of Incorporation of the Independence Property Owner's Association, Inc., filed with the Secretary of State of the State of Georgia, as they may be amended.

"Association": Independence Property Owner's Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

"Base Assessment": Assessments levied on all Parcels subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Parcels, as determined in accordance with Section 8.1.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Georgia corporate law.

"By-Laws": The By-Laws of the Independence Property Owner's Association, Inc., as they may be amended.

"Class "B" Control Period": The period of time during which the Declarant, as the Class "B" Member, is entitled to appoint a majority of the members of the Board, as provided in the By-Laws. The Class "B" Control Period shall terminate on the first to occur of the following:

- (a) December 31, 2050; or
- (b) when, in its discretion, the Class "B" Member so determines.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners and occupants of Parcels. The term shall include the Limited Common Area, as defined below.

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"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. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing at Independence, or the minimum standards established pursuant to the Architectural Guidelines, Restrictions and Rules, and Board resolutions, whichever is the higher standard. Initially, Declarant shall establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may differ for each Service Area or Parcel as dictated by Declarant. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Independence change.

"Covenant to Share Costs": Any declaration of easements and covenant to share costs or similar instrument executed and Recorded by Declarant which creates certain easements for the benefit of the Association and which obligates the Association to share the costs of maintaining certain property described in such Covenant to Share Costs.

"Declarant": Horse Creek Partners, LLC, a Georgia limited liability company, or any successor or assign who acquires title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

"Declarant Affiliate": Each of those Persons, if any, identified as Declarant Affiliates on any Supplemental Declaration, their successors and assigns, and any other natural person, corporation, limited liability company, limited liability partnership, general partnership, limited partnership, or sole proprietorship (a) owning, owned by, or under common control with, the Declarant, (b) of which Declarant is a member or partner, or (c) which is a member of Declarant. The existence of an intermediary between Declarant and Declarant Affiliates shall not affect the Declarant Affiliates' status as such.

"Developer Member": Any Person who purchases one or more Parcels within the Properties for the purpose of further subdivision, development, and/or resale in the ordinary course of its business.

"Development Guidelines": The guidelines, standards, and review procedures approved by Declarant for each Parcel specifying the permitted uses, site development requirements, and in some cases architectural and landscaping design guidelines adopted pursuant to Article III, as they may be amended.



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"Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Architectural Guidelines, the Restrictions and Rules, and Board resolutions, all as they may be amended.

"Limited Common Area": A portion of the Common Area primarily benefitting one or more, but less than all, Service Areas, as described in Article XI.

"Master Plan": The land use plan for the development of Independence prepared by Thomas & Hutton Engineering Company, Inc., and approved by the City of Hinesville, Georgia, as it may be amended, which includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described in Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article VIII.

"Member": A Person subject to membership in the Association pursuant to Section 5.2.

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

"Owner": One or more Persons who hold the record title to any Parcel or Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Parcel or Unit is subject to a written, Recorded lease with a term in excess of five years and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner during the term of the lease for the purpose of exercising all privileges of membership under this Declaration and the By-Laws. Any Developer Member is considered an Owner of any portion of a Parcel not subdivided into Units, and, upon the subdivision of any portion of said Parcel, an Owner of said Units.

"Parcel": A portion of the Properties usually consisting of contiguous multiple acres of land intended for independent ownership, development, and use by Persons other than the Association, including, without limitation, uses such as residential subdivisions, condominiums and commercial developments.

"Parcel Association": An automatic membership association consisting of all Owners of Units, recreational facilities and separately owned parcels of land (however used) within a Parcel conveyed to a Developer Member.

"Parcel Association Member": Any Parcel Association satisfying the requirements of this Declaration to which a Developer Member has delegated its responsibilities and obligations as a Member under this Declaration and which has agreed to assume said responsibilities and obligations.

"Parcel Covenants": A Recorded subdivision or condominium declaration or agreement of covenants, conditions, and restrictions establishing a general plan of development for each Parcel.

"Person": A natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

"Private Amenity": Any real property and improvements and facilities thereon located within or in the vicinity of the Properties which are privately owned and operated by Persons other than the Association or a Parcel Association, for recreational and related purposes, on a membership basis or otherwise.

"Properties": The real property described in Exhibit "A," together with such additional property as is made subject to the terms of this Declaration in accordance with Article VIII.

"Record," "Recording," or "Recorded": The filing of a legal instrument in the Office of the Clerk of the Superior Court of Bryan County, Georgia, or such other place as may be designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

"Service Area": A group of Parcels designated as a separate Service Area pursuant to this Declaration or any Supplemental Declaration for purposes of sharing Limited Common Areas or receiving other benefits or services from the Association which are not provided to all Parcels within the Properties. A Service Area may be comprised of more than one land use and may include noncontiguous property. A Parcel may be part of more than one Service Area established for different purposes. Where the context permits or requires, the term Service Area shall also refer to the Service Area Committee established in accordance with the By-Laws to represent the interests of the Owners of Parcels within a Service Area. Service Areas may be established and modified as provided in Section 6.3.

"Service Area Assessments": Assessments levied against the Parcels in a particular Service Area to fund Service Area Expenses, as described in Section 7.1.

"Service Area Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Parcels within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Service Area(s).

"Special Assessment": Assessments levied in accordance with Section 7.2.

"Specific Assessment": Assessments levied in accordance with Section 7.3.

"Supplemental Declaration": An instrument Recorded pursuant to Article VIII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional easements, restrictions, and/or obligations on the land described in such instrument.

"Technology Assessment": Assessments levied in accordance with Section 7.9.

"Unit": A portion of Independence, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings for independent ownership, each dwelling shall be deemed to be a separate Unit.

### **Article III    Development Guidelines**

#### **3.1.    General.**

No structure or thing shall be placed, erected, or installed upon any Parcel and no improvements or other work including staking; clearing, excavation, grading, and other site work; exterior alterations of existing improvements; or planting or removal of landscaping ("Work") shall take place within Independence, except in compliance with this Article and the Development Guidelines. The Work subject to this Article III shall not include the initial construction or modification of residential units constructed by Developer Members for which plans or prototype units have been approved by Declarant pursuant to Section 9.1(b) hereof.

This Article shall not apply to Declarant's activities, nor to activities of the Association during the Class "B" Control Period.

#### **3.2.    Development Review.**

By accepting a deed or other instrument conveying any interest in any portion of the Properties, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Parcel unless and until the Person or committee having jurisdiction under this Section has given its prior written approval for such Work.

(a) Declarant Authority. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that Declarant, as the developer of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no Work shall be commenced on such Owner's Parcel unless and until Declarant or its designee has given its prior written approval for such Work, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant or a Declarant Affiliate owns any

portion of the Properties or any real property adjacent to the Properties, unless earlier terminated in a written instrument executed and Recorded by Declarant.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (I) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by Declarant.

(b) Association Authority. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through a committee ("Development Review Committee") which the Board appoints, shall assume jurisdiction over development matters hereunder and shall have the same rights to delegate said rights as are provided to the Declarant. The committee, when appointed, shall consist of five persons. Two committee members shall be appointed, and may be removed and replaced, by the directors representing Class "A" Members. Two committee members shall be appointed, and may be removed and replaced, by the directors representing the Class "B" Members for so long as the Association has Class B Members. The fifth committee member shall be appointed, and may be removed and replaced, by a majority vote of the Board. Upon termination of the Class B Control Period, all committee members shall be appointed, removed or replaced by a majority vote of the Board. The members of the committee need not be Members of the Association or representatives of Members.

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

(c) Fees; Assistance. The Declarant or the Development Review Committee (hereinafter referred to as the "Reviewer") may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may retain architects, engineers, or other persons as deemed necessary to perform the review. If retained by the Association, the Association may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

### 3.3. Guidelines and Procedures.

(a) Development Guidelines. Declarant shall prepare the initial Development Guidelines, which may contain general provisions applicable to all of Independence as well as specific provisions which may vary according to land use and housing type and from one area of the Properties to another. Said guidelines may specify procedures, fees, performance bonds, and such other matters as Declarant shall deem appropriate. The Development Guidelines are intended to provide guidance to Owners and Developer Members regarding matters of particular concern to the Reviewer in considering applications hereunder. The Development Guidelines are not the exclusive

basis for decisions of the Reviewer, and compliance with the Development Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Development Guidelines as long as it or any Declarant Affiliate owns any portion of the Properties or has a right to expand the Properties pursuant to Section 8.1, notwithstanding a delegation of reviewing authority to the Association, unless Declarant also delegates the power to amend to the Association. Upon termination or delegation of Declarant's right to amend, the Development Review Committee appointed by the Board shall have the authority to amend the Development Guidelines with the consent of the Board. Any amendments to the Development Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Development Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Development Guidelines less restrictive.

#### 3.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Development Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

#### 3.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude 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.

#### 3.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the

structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design.

The Reviewer shall have sole and full authority to determine matters of aesthetic judgment and the determination of the Reviewer as to such matters shall be final and shall not be subject to judicial review so long as exercised in accordance with the procedures set forth in this Article.

Declarant, the Association, the Board, any committee, or any member of any of the foregoing, shall not be held liable for 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 such contractor has been approved or featured by Declarant to engage in construction in the Properties; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Parcel. In all matters, the Board, the Reviewer, and the members of each shall be defended and indemnified by the Association as provided in Section 6.7.

#### **Article IV Maintenance and Repair**

##### **4.1. Maintenance of Units and Parcels.**

Each Owner shall maintain such Owner's Parcel and all landscaping and improvements comprising the Parcel in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association, or a Developer Member or the Parcel Association, pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Parcel.

Responsibility for maintenance of landscaping under this Section shall include responsibility for watering of lawns and other landscaping as needed to maintain it in a healthy condition. It shall also include responsibility for removal and replacement of diseased or dead plant material, subject to the provisions of Article III and any water feature within the Properties.

In addition, each Owner is responsible for sodding and maintaining that portion of the Common Area lying between and abutting the boundary and any water feature within the Properties.

##### **4.2. Maintenance by Parcel Associations.**

Any Parcel Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants.

The Association may assume the maintenance responsibility of any Parcel Association, either by agreement with the Parcel Association or because, in the opinion of the Board, the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Service Area

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Assessment only against the Parcels subject to the jurisdiction of the Parcel Association. The provision of services in accordance with this Section shall not constitute discrimination within a class.

4.3. 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 shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Parcel, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on such Owner's Parcel, less a reasonable deductible, unless the Association or Parcel Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Parcel and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising such Owner's Parcel, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article III. Alternatively, the Owner shall clear the Parcel and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Parcel Association in the same manner as if the Parcel Association were an Owner and the property for which it has maintenance responsibility were a Parcel. Additional covenants applicable to any portion of the Properties may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units or Parcels within such area and for clearing and maintaining the Parcels in the event the structures are not rebuilt or reconstructed.

**Article V      The Association and its Members**

5.1. Function of Association.

The Association has been established for the purpose of administering the Properties in accordance with the Governing Documents. Its responsibilities include, but are not limited to:

- (a) management, maintenance, operation and control of the Area of Common Responsibility;
- (b) interpretation and enforcement of the Governing Documents;
- (c) upholding the Community-Wide Standard within the Properties; and

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(d) upon delegation or termination of Declarant's authority under Article III, administering the architectural review process for the Properties.

5.2. Membership.

Member shall mean and refer to Declarant, Developer Members and Parcel Association Members. If a Parcel is owned by more than one Developer Member, all Developer Members shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 5.3(b) and in the By-Laws, and all such Developer Members shall be jointly and severally obligated to perform the responsibilities of a Member. The membership rights of a Developer Member which is not a natural person or of Declarant or Parcel Association shall be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Member in a written instrument provided to the Association's Secretary.

5.3. Voting.

(a) Classes of Membership. The Association initially shall have two classes of membership, Class "A" and Class "B," as follows:

(i) Class "A". Class "A" Members shall be all Developer Members and all Parcel Association Members which have replaced Developer Members as provided herein. Each Class "A" Member will be entitled to one vote per Equivalent Unit assigned to the Parcel in the Supplemental Declaration.

(ii) Class "B". The sole Class "B" Member shall be the Declarant. The consent of the Class "B" Member shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents. In addition, the Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board, the membership, and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

- (A) two years after expiration of the Class "B" Control Period; or
- (B) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

Declarant may, by Supplemental Declaration, create additional classes of membership for the Owners of Parcels within any additional property made subject to this Declaration pursuant to Article VIII, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(b) If there is more than one Owner of any Parcel, the vote for such Parcel shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in writing prior to the vote being taken. Absent such advice, the Parcel's vote shall be suspended if more than one Person seeks to exercise it.



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**Article VI Association Powers and Responsibilities****6.1. Acceptance and Control of Association Property.**

(a) The Association may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of Owners, occupants, and residents of Independence.

(b) Declarant and its designees may convey to the Association personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibit "A" or "B," and the Association shall accept any such property; provided, Declarant and its designees shall not convey any real property to the Association which Declarant or its designees know or have reason to believe is contaminated with hazardous substances in such amounts as would require remediation under state or federal law. If Declarant conveys property to the Association as Common Area at no cost to the Association, the Association shall, upon Declarant's written request, reconvey to Declarant any unimproved portions of such property, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

**6.2. Maintenance and Operation of Area of Common Responsibility.**

In accordance with the Community-Wide Standard, the Association shall maintain the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area;
- (b) all streets and roadways within the Common Area until such time as they are accepted by a public body for perpetual maintenance, and any landscaping within the rights-of-way of streets or roads within or abutting the Common Area, whether or not dedicated to the public;
- (c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;
- (d) all ponds, streams and/or wetlands located within the Common Area which serve as part of the stormwater drainage system for the Common Area, including improvements and equipment installed therein or used in connection therewith. Such costs and expenses may be assessed against the Owner of a Parcel as a Specific Assessment in accordance with Article VII; and
- (e) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such

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property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, conservation areas, wetlands dedicated to governmental agencies, and any and all trails within the Properties if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard, but excluding any drainage facilities serving individual Parcels, or for which Declarant has assigned responsibility to a Developer Member or Parcel Association Member by Supplemental Declaration.

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 Area of Common Responsibility 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 75% of the Class "A" votes in the Association, respectively, and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with Declarant's prior written approval as long as Declarant or any Declarant Affiliate owns any property described in Exhibit "A" or "B" of this Declaration.

Except as specifically provided herein, the costs associated with maintenance, repair, replacement, insurance and operation of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof. The cost of maintenance, repair, replacement and insurance of Limited Common Areas shall be a Service Area Expense assessed against the Parcels to which the Limited Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Upon resolution of the Board, Parcels within each Service Area may be assessed Service Area Assessments to fund the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Service Area. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Service Area and adjacent public roads, private streets within the Service Area, and lakes or ponds within the Service Area, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, all Service Areas which are similarly situated shall be treated the same.

6.3. Provision of Benefits or Services to Service Areas.

(a) The Declarant, by Supplemental Declaration, may assign portions of the Properties to one or more Service Areas (by name or other identifying designation) as it deems appropriate,

which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Parcels in addition to those which the Association generally provides to all Parcels. The cost of providing such benefits or services shall be assessed against the Parcels within such Service Area as a Service Area Assessment.

(b) Any group of Owners may petition the Board to designate their Parcels as a Service Area for the purpose of receiving from the Association (i) special benefits or services which are not provided to all Units or Parcels, or (ii) a higher level of service than the Association provides to all Units or Parcels. Upon receipt of such petition signed by Owners of a majority of the Units or Parcels within the proposed Service Area, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the cost thereof, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate among Units or Parcels in all Service Areas receiving the same service). Upon written approval of the proposal by Owners of at least 75% of the Units or Parcels within the proposed Service Area, the Association shall provide the requested benefits or services and shall assess the cost thereof among the Units or Parcels in the proposed Service Area as a Service Area assessment pursuant to Section 8.1, subject to the right of the Owners of Units or Parcels within the Service Area thereafter to veto the budget for their Service Area as provided in Section 7.1.

#### 6.4. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are 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 the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

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

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Service Area, obtain and maintain property insurance on the insurable improvements within such Service Area which insurance shall comply with the requirements of Section 6.4(a)(i). Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit or Parcel insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units or Parcels within a Service Area shall be a Service Area Expense; and (ii) premiums for insurance on Limited Common Areas may be included in the Service Area Expenses of the Service Area(s) to which such Limited Common Areas are assigned 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 of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in Bryan County, Georgia. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.4(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area 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 or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units or Parcels as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in Georgia;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Service Area shall be for the benefit of the Owners of Parcels within the Service Area and their Mortgagees, as their interests may appear;

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(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(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 under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member of the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) provide a waiver of subrogation under the policy against any Owner or occupant of a Unit or Parcel;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which name the Owners, collectively, as additional insureds and provide:

(I) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

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

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) 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

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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 Members representing at least 75% of the total Class "A" votes attributable to Parcels entitled to use and enjoy the damaged portion of the Common Area, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. 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. However, such extension shall not exceed 60 additional days. No Mortgagee 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, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members or the Owners of Units or Parcels within the insured Service Area, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit or Parcel.

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 premiums for the applicable insurance coverage under Section 6.4(a).

#### 6.5. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit or Parcel shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit or Parcel. (In the event that any occupant, guest, or invitee of a Unit or Parcel violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, 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;

(iii) suspending any Person's right to use Common Area facilities other than as necessary for ingress and egress to the Unit or Parcel owned or occupied by such Person;

(iv) suspending any services provided by the Association to an Owner or the Owner's Unit or Parcel if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

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(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit or Parcel in violation of Article III and to restore the Unit or Parcel to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(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 III and the Development Guidelines from continuing or performing any further activities in Independence; and

(viii) levying Specific Assessments to cover costs incurred by the Association to bring a Unit or Parcel into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), and entry onto any Unit or Parcel for such purpose shall not be considered a trespass;

(ii) 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 his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit or Parcel and the Owner as a Specific 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, attorney's fees and court costs, reasonably incurred in such action.

(b) The Association's 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;

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(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) it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce the Governing Documents.

The Association, by contract or other agreement, may enforce applicable city and county ordinances and permit the City of Hinesville and/or Bryan County, Georgia to enforce ordinances within Independence for the benefit of the Association and its Members.

#### 6.6. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All the Association's rights and powers may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require the 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 Area of Common Responsibility, 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 litigation on behalf of or in the name of the Association or its 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.

#### 6.7. Indemnification of Officers, Directors and Others.

Subject to Georgia law, the Association shall indemnify and defend 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 of Directors) 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 and defend shall be limited to those actions for which liability is limited under this Section.

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 not be liable for failure to perform their fiduciary duties if the special assessments for funds necessary for such directors and officers to perform their fiduciary duties are disapproved or reduced by the Members pursuant to Section 7.2. 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).

The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. 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.

6.8. Safety and Security.

Each Owner and occupant of a Unit or Parcel, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Properties, 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 Properties, 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 Unit or Parcel that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Properties assumes all risks of personal injury and loss or damage to property, including Parcels and the contents of Parcels, resulting from acts of third parties.

6.9. Provision of Services; Master Telecommunications System.

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The Association may provide, or provide for, services and facilities for the Members and their Units or Parcels, and shall be authorized to 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 provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Units or Parcels. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, community intranet access, security, caretaker, transportation, fire protection, utilities, 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 shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units or Parcels as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

Without limiting the generality of the foregoing, the Declarant has reserved for itself, its affiliates, successors, and assigns, the exclusive and perpetual right and easement to establish and/or operate within the Properties, and to service every Parcel, Unit, Common Area, building, structure, and other portion of said Properties, a central telecommunication and multi-medium receiving and distribution system, including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (the "Master Telecommunications System") as Declarant, in its discretion, deems appropriate to enhance and promote the value, desirability, identity, and efficiency of the Properties. Such exclusive and perpetual right shall include, without limitation, Declarant's right to select and contract with qualified Persons licensed to operate said Master Telecommunications System and provide services in connection therewith, including, without limitation, video (e.g. cable, IP solutions, and/or satellite), internet, security monitoring, telephone/voice, broadband and data transmission services, wireless transmission or other transmission media or protocol, and any and all other services and products which are now or may hereafter be offered in connection with or through said Master Telecommunications System. Declarant, itself or through the Association, shall also have the right to charge Parcel Associations and/or Unit Owners and other individual users a reasonable and competitive charge or fee for such services and its operation of the Master Telecommunications System relative to prevailing rates for such services within Liberty County, Georgia, which charges and fees shall be regularly published by Declarant and/or the Association.

WITHOUT LIMITING THE FOREGOING, DECLARANT, EITHER ITSELF OR THROUGH THE ASSOCIATION, MAY ENTER INTO A BULK RATE SERVICE AGREEMENT(S) WITH QUALIFIED SERVICE PROVIDERS OF ITS CHOOSING FOR THE OPERATION OF THE MASTER TELECOMMUNICATIONS SYSTEMS AND PROVISION OF RELATED SERVICES TO ALL PORTIONS OF THE PROPERTIES AND ALL PARCELS AND UNITS THEREIN AS A COMMON EXPENSE; IT BEING UNDERSTOOD AND ACKNOWLEDGED THAT THE RECEIPT OF SUCH BULK SERVICES SHALL BE MANDATORY FOR EVERY SUCH UNIT WITHIN THE

PROPERTIES; PROVIDED THAT ONLY TELEPHONE/VOICE, INTERNET/DATA, VIDEO, AND SECURITY SERVICES (OR THEIR EQUIVALENT OR SUCCESSOR TECHNOLOGIES) SHALL BE ELIGIBLE FOR INCLUSION IN SUCH BULK SERVICE AGREEMENTS. NON-USE OF SERVICES PROVIDED TO UNITS AS A COMMON EXPENSE SHALL NOT EXEMPT ANY UNIT OWNER FROM THE OBLIGATION TO PAY ASSESSMENTS FOR SUCH SERVICES. ALL SUCH COMMON EXPENSES ATTRIBUTABLE TO THE PROVISION OF THESE BULK SERVICES SHALL BE ASSESSED AND COLLECTED AS TO EACH UNIT OR OTHER PORTION OF THE PROPERTIES AS A TECHNOLOGY ASSESSMENT UNDER THIS DECLARATION; THE SPECIFIC AMOUNTS OF WHICH SHALL BE ESTABLISHED BY DECLARANT AND/OR THE ASSOCIATION IN ACCORDANCE WITH THE CONTRACT(S) ENTERED INTO FOR THE PROVISION OF SUCH SERVICES. THE FAILURE TO PAY ANY SUCH TECHNOLOGY ASSESSMENT SHALL SUBJECT THE UNIT OWNER AND HIS OR HER UNIT TO ALL SUCH PENALTIES AND ENFORCEMENT PROCEDURES AS ARE AVAILABLE FOR THE ENFORCEMENT OF ASSESSMENTS UNDER THIS DECLARATION AS WELL AS THE APPLICABLE PARCEL COVENANT, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, FINES, LIENS, SUITS FOR COLLECTION, PENALTIES, AND SUSPENSION OF SERVICES. IF ADDITIONAL SERVICES OR BENEFITS ARE PROVIDED TO PARTICULAR UNITS AT THE OWNER'S OR OCCUPANT'S REQUEST ABOVE BEYOND THOSE BULK SERVICES PROVIDED THROUGH TECHNOLOGY ASSESSMENTS, THE BENEFITED OWNER(S) SHALL PAY THE SERVICE PROVIDER DIRECTLY FOR SUCH SERVICES, OR THE ASSOCIATION MAY ASSESS THE COSTS THEREOF AS A SPECIFIC ASSESSMENT UNDER THIS DECLARATION, AS APPROPRIATE. THE OPERATION OF THE MASTER TELECOMMUNICATIONS SYSTEM AND THE SERVICES PROVIDED THROUGH THE SAME SHALL BE IN ACCORDANCE WITH ANY AND ALL CONTRACTS AND OTHER AGREEMENTS ENTERED INTO WITH THE PROVIDER(S) OF SUCH SERVICES AND THE OPERATOR(S) OF THE MASTER TELECOMMUNICATIONS SYSTEM, AS WELL AS THIS DECLARATION.

To the extent any terms or provisions of any Parcel Covenant are deemed contrary to or inconsistent with this Section 6.9 or with this Declaration, the provisions of this Section 6.9 and the Master Declaration shall control.

6.10. Powers of the Association Relating to Parcel Associations.

A Parcel Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Parcel Association fails to comply, the Association shall have the right to effect such action on behalf of the Parcel Association and levy Specific Assessments against the Units or Parcels subject to the Parcel Association's jurisdiction to cover the costs incurred, as well as an administrative charge and sanctions, as more particularly described in Section 9.1 hereof.

6.11. Relationships with Other Properties.

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

6.12. Facilities and Services Open to the Public.

Certain facilities and areas within the Properties may be open for use and enjoyment by the public. For example, such facilities and areas may include roads, sidewalks, greenbelts, trails, paths, parks, and similar areas conducive to public gathering and interaction. Declarant may designate such facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Area of Common Responsibility, or the Board may so designate them at any time thereafter. The availability of such areas to the general public shall not relieve any Owner of responsibility for assessments levied to fund the Association expenses incurred in connection with such areas.

6.13. Recycling Programs.

The Association may establish a recycling program and recycling center, and, in such event, all Owners and occupants of Parcels shall support such program by recycling, to the extent reasonably practical, all materials which the recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received as a result of such recycling efforts shall be used to defray the costs of new programs.

**Article VII Association Finances**

7.1. Budgeting for and Allocating Association Expenses.

(a) Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses of the Association for the coming year, to be allocated among all Parcels, and separate budgets reflecting the estimated Service Area Expenses for each Service Area to which the Association expects to provide benefits or services during the budget period. Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Parcels, and the amount estimated to be generated through the levy of assessments against the Parcels.

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

(b) Calculation of Base Assessments. Upon determining the total amount of income required to be generated through the levy of Base Assessments, the Association shall allocate such amount among the Parcels subject to assessment pursuant to Section 7.4 in accordance with the formula set forth on Exhibit "C" and shall assess such amount to each such Parcel as a Base Assessment.

Declarant may, but shall not be obligated to, reduce the Base Assessment rate per Equivalent Unit (as defined on Exhibit "C") for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

(c) Calculation of Service Area Assessments. The total amount of estimated Service Area Expenses for each Service Area shall be allocated among all Parcels within the Service Area which are subject to assessment under Section 7.4 in accordance with the formula set forth in Exhibit "C" and shall be assessed as a Service Area Assessment; provided, if so specified in the applicable Supplemental Declaration or if so directed by a petition signed by at least two-thirds of the Owners of Parcels in the Service Area, any portion of the Service Area Assessment intended for exterior maintenance, insurance or replacement reserves relating to structures on Parcels shall be levied on the benefitted Parcels in proportion to the benefit received, as the Board may reasonably determine.

All amounts collected by the Association as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(d) Notice of Budget and Assessment; Right to Disapprove. The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The Common Expense budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association, and by the Class "B" Member, if such exists. The Service Area Expense budget for each Service Area shall automatically become effective unless disapproved at a meeting by Owners of 67% of the Parcels within the Service Area, except that the right to disapprove shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents specifically require to be assessed as a Service Area assessment.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on petition of the Members as provided for special meetings in the By-Laws, and in the case of any Service Area budget, on petition of Owners of at least 25% of the Parcels within the Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved 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.

(e) Budget Revisions. The Board may revise the budget and adjust the assessments levied pursuant thereto from time to time during the year, subject to the same notice requirements and the right of the Members to disapprove the revised budget as set forth above.

7.2. 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, or against the Parcels within any Service Area if such Special Assessment is for Service Area Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the total votes in each class of membership allocated to Parcels which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments 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.

7.3. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Parcel or Parcels as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Parcels upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 6.9). Specific 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 Parcel into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Parcel, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Parcel Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b);

(c) to cover costs incurred or expected to be incurred by the Association to set up, clean up, provide additional security, utilities or other services in connection with any festival or other special events sponsored by the Owners or tenants of any Parcel or group of Parcels, upon the Board's determination, in the exercise of its business judgment, that such services are necessary or appropriate; and

(d) to cover costs incurred by the Association on behalf of an Owner of a Parcel in accordance with Section 6.2(d).

The Association may also levy a Specific Assessment against the Parcels within any Service Area to reimburse the Association for costs incurred in bringing the Service Area into compliance

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with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owners of Parcels in the Service Area and an opportunity for such Owners to be heard before levying any such assessment.

7.4. Authority to Assess Owners; Time of Payment.

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Parcel on the first day of the month following: (a) the month in which the Parcel is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Service Area Assessment, if any, levied on each Parcel shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Parcel.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Parcel and impose special requirements for Developer Members or Parcel Association with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and Service Area Assessment, if any, shall be due and payable in advance on the first day of each fiscal year. If any Developer Members or Parcel Association are delinquent in paying any assessments or other charges levied on it's Parcel, the Board may require the outstanding balance on all assessments to be paid in full immediately.

7.5. Obligation for Assessments.

Each Developer Member, by accepting a deed or entering into a Recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 18% per annum or such higher rate as the Board may establish, subject to the limitations of Georgia law), late charges as determined by Board resolution, costs, and reasonable attorney's fees, shall be the personal obligation of each Developer Member and a lien upon each Parcel until paid in full.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Developer Member an assessment notice shall not be deemed a waiver, modification, or a release of any Developer Member from the obligation to pay assessments. In such event, each Developer Member shall continue to pay Base Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new budget becomes effective and a new assessment is levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

No Developer Member may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Parcel, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Developer Member. 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

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inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Developer Member liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. 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.

7.6. Relief from Assessments. A Developer Member may be relieved of its obligation to pay assessments provided herein by providing a substitute Developer Member or Parcel Association Member to whom such obligations shall be delegated, subject to the following conditions:

(a) Developer Member shall assign said duties and the substitute Member shall accept the assignment of such duties by written instrument executed by both parties and recorded in the Bryan County, Georgia real estate records.

(b) Such substitute Member must be acceptable to Declarant in its sole discretion. In determining whether a substitute Member is acceptable, Declarant may consider, among other things, whether said substitute Member owns a Unit or Parcel or has a vested interest in the area it will represent, is of good repute, and has satisfactory financial strength and net worth to pay assessments levied by the Association. A Parcel Association Member is hereby declared to be acceptable as a substitute Member for the Parcel under its jurisdiction if it has the power to assess every Unit located therein for assessments, including the obligations set forth in this Declaration, and is governed by Recorded Parcel Covenants as provided by Section 9.1 hereof. Each Developer Member that conveys Units to Owners within a Parcel shall form a Parcel Association to be its substitute Member, unless Declarant consents to allow more than one Member for said Parcel as indicated by a written instrument recorded in the Bryan County, Georgia real estate records.

(c) Said delegation of duties shall be effective as of January 1 following the delivery of said recorded assignment and assumption agreement to Declarant.

7.7 Lien for Assessments.

The Association shall have a lien against each Parcel to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Georgia law), and costs of collection (including attorney's fees). 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, and (b) 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.

The Association may bid for the Parcel at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Parcel. While a Parcel is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Parcel shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Parcel had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.



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Sale or transfer of any Unit or Parcel shall not affect the assessment lien or relieve such Unit or Parcel from the lien for any subsequent assessments. However, the sale or transfer of any Unit or Parcel pursuant to foreclosure of the first Mortgage shall extinguish the lien only with respect to said Unit or Parcel, as the case may be, as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit or Parcel shall not be personally liable for assessments on such Unit or Parcel due prior to such acquisition of title. Such unpaid assessments (except Technology Assessments) shall be deemed to be Common Expenses collectible from Owners of all Units or Parcels subject to assessment under Section 7.4, including such acquirer, its successors and assigns.

7.8. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;

(b) Any property dedicated to the public and accepted by any governmental authority or public utility or utilized by a governmental authority or public utility;

(c) Any Parcel used by a house of worship recognized as such under the Internal Revenue Code; and

(d) Any Parcel owned by Declarant or a Declarant Affiliate utilized as a real estate sales office, design center, or other purposes for the promotion and sale of the Properties;

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain 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 Declaration for purposes listed in Section 501(c).

7.9. Technology Assessments.

Pursuant to Section 6.9 of this Declaration, Declarant, either itself or through the Association, may enter into a bulk rate service agreement(s) with qualified service providers of its choosing for the operation of the Master Telecommunications System and provision of related services to all portions of the Properties and all Units therein as a Common Expense. In this connection, and at least thirty (30) days before the beginning of each fiscal year, the Board shall publish the rate schedule (the "Rate Schedule") for all bulk services to be provided through the Master Telecommunications System, all as determined and prescribed under those certain contracts or agreements with the operators of said Master Telecommunications System and the providers of all related services entered into by Declarant and/or the Association (collectively, the "Technology Service Contracts"), which rates shall be (i) uniformly applied to all Units, and (ii) reasonable and competitive relative to prevailing rates for similar services within Liberty County, Georgia. No decision or determination of the Board with respect to the Master Telecommunications System or the services provided through the same shall be disturbed or

subject to review by the Association during the Class "B" Control Period. More specifically, the Association, on behalf of the Declarant, shall be authorized to levy an assessment for the payment of all such bulk services provided through the Master Telecommunications System (a "Technology Assessment"). Technology Assessments shall be paid in such a manner and on such dates as the Board may establish or as may be required in the Technology Service Contracts. Technology Assessments may be enforced a manner similar to any other Assessments provided for in this Declaration, it being acknowledged that the following shall additionally apply to Technology Assessments, without limitation to other rights and privileges of the Association provided as to Assessments generally:

(a) All Technology Assessments, together with interest (computed from the due date of such assessment at a rate established by the Board, subject to the limitations of Georgia law), late charges established by the Board (subject to the limitations of Georgia law), costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit and also shall be the personal obligation of the Unit Owner at the time the Technology Assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any Technology Assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid Technology Assessments which accrued prior to such acquisition of title.

(b) No Unit Owner may exempt himself from liability for Technology Assessments by non-use of bulk services provided to Units through the Master Telecommunications System, or any other means. The obligation to pay Technology Assessments is a separate and independent covenant on the part of each Unit Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Declarant, the Association or Board, or any provider of services through the Master Telecommunications System 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, each Unit Owner shall be liable for the payment of any additional services requested and received by a lessee, guest, or other occupant of the Owner's Unit.

(c) The Association shall have a lien against each Unit to secure payment of delinquent Technology Assessments, as well as interest at a rate set by the Board (subject to the maximum interest rate limitations of Georgia law), late charges in such amount as the Board may establish (subject to the limitations of Georgia law), costs of collection, and attorneys fees. 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, and (b) the lien or charge of any first Mortgage of record (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 foreclosure in the same manner as mortgages are foreclosed under Georgia law.

(d) The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; and (b) no assessment shall be levied on it. The Association may sue for unpaid Technology Assessments and other charges

authorized hereunder without foreclosing or waiving the lien securing the same. Such rights of enforcement shall be in addition to, and not in lieu of, any and all other rights and remedies afforded the Association under law or at equity. Additionally, any additional charge or cost incurred by a Unit Owner in connection with additional services or upgrades requested shall, at the Board's discretion, be subject to collection and enforcement action by the Board as if the same were a part of the Technology Assessments due hereunder; subject to the consent and request of the service provider responsible for supplying such additional services through the Master Telecommunications System.

(e) The sale or transfer of any Unit shall not affect the Technology Assessment lien or relieve such Unit from the lien for any subsequent Technology Assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such Technology Assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for Technology Assessments on such Unit due prior to such acquisition of title. In no event shall Technology Assessments which remain unpaid due to the extinguishment of a lien as to any one Unit be collectible from Owners of other Units subject to Technology Assessments hereunder; it being acknowledged that said unpaid Technology Assessments in such situations shall not be deemed a Common Expense for purposes of collection and payment

#### **Article VIII Expansion of the Community**

##### **8.1. Expansion by Declarant.**

Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand the Properties pursuant to this Section shall expire when all of the property described in Exhibit "B" has been subjected to this Declaration or 30 years after this Declaration is Recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

##### **8.2. Expansion by the Association.**

The Association may also subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Members representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the additional property, if other than Declarant. In addition, so long as Declarant or any Declarant Affiliate owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the Association's President and Secretary, by the owner of the additional property, and by Declarant, if Declarant's consent is necessary.

8.3. Additional Covenants and Easements.

Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

8.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with this Declaration.

**Article IX Additional Rights Reserved to Declarant**

9.1. Approval of Parcel Covenants.

Prior to the sale or lease of any Unit in a Parcel, each Developer Member shall submit to Declarant Parcel Covenants for Declarants' prior written approval (any of the rights contained in this Section 9.1 shall accrue to the Association after expiration of the Class Control Period). Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant. Said Parcel Covenants shall include, but not be limited to, the following provisions:

(a) Restrictive Covenants, Rules and Restrictions. The restrictive covenants, rules, and restrictions shall provide for the use of the Units and the Parcel common area in a manner consistent with the scheme of development described in the Development Guidelines for the Parcel approved by the Declarant, these Governing Documents and Community-Wide Standard.

(b) Architectural and Landscape. The Parcel Covenants shall provide for the

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review by the Developer Member, Parcel Association or their designees of any improvements or landscaping on the Parcel in accordance with guidelines for the Parcel approved by Declarant and in accord with the Community-Wide Standard. In the event that Developer Member intends to initially construct all improvements on the Parcel, Developer Member's plans or prototype homes shall be subject to Declarant's prior written approval, and the construction of said homes shall be consistent with said plans or prototype homes and the Community-Wide Standard.

(c) Maintenance. The Parcel Covenants shall provide that each Parcel or Unit be maintained in a manner consistent with the Governing Documents and the Community-Wide Standard, and provide appropriate remedies for failure to do so.

(d) Assessments. The Parcel Covenants shall provide that each Unit shall be subject to assessments similar to the Base Assessments, Special Assessments, and Specific Assessments described herein, and provide remedies for the collection of said assessments, including the right to file liens against individual Units. Said assessments shall specifically include the right to assess Units and Unit Owners for the purpose of enforcing the rights of the Declarant and the Association against any Parcel, Unit, Developer Member, Parcel Association or Owner as provided in this Declaration, or in any rules, restrictions, or guidelines authorized by this Declaration.

(e) Other. Prior to recording of the Parcel Covenants, Declarant may specify that other reasonable provisions be included in the Parcel Covenants as it deems necessary for the benefit of Independence and for the purpose of insuring that each Parcel is developed in accordance with the Development Guidelines approved for said Parcel.

(f) Declarant Enforcement. The Parcel Covenants shall provide that in the event that the Parcel Association fails to enforce the provisions of the Parcel Covenants required hereby (i.e. restrictive covenants, rules and regulations, architectural and landscape review, maintenance, and assessments) after thirty (30) days written notice from the Declarant (or the Association after the Class B Control Period), the Declarant (or the Association after the Class B Control Period) shall have the authority to enforce said provisions and to take such actions on behalf of the Parcel Association as may be required to enforce said provisions. Said authority shall include, but not be limited to, the right to specially assess Unit Owners for the purpose of paying assessments due from the Parcel Association to the Association.

(g) Amendments. The Parcel Covenants shall not be modified or amended in any manner that materially affects the provisions described in this Section 9.1 without the prior written consent of the Declarant.

#### 9.2. Withdrawal of Property.

So long as Declarant has the right to expand the Properties pursuant to Section 8.1, Declarant reserves the right to amend this Declaration for the purpose of withdrawing from the coverage of this Declaration any portion of the Properties which has not yet been improved with structures, provided no withdrawal shall be permitted if the result would be to reduce the total number of acres subject to the Declaration by more than 10%. 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.

#### 9.3. Right to Approve Changes in Community Standards.

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So long as Declarant or any Declarant Affiliate owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1, no amendment to or modification of any Restrictions and Rules or Architectural Guidelines shall be effective without prior notice to and the written approval of Declarant.

9.4. Marketing and Sales Activities.

Declarant and Developer Members authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Parcels, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Developer Members shall have easements for access to and use of such facilities at no charge.

9.5. Right to Develop.

Declarant and its 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.

Every Person that acquires any interest in the Properties acknowledges that Independence is a master planned community, the development of which is likely to extend over many years, and that changes in the Master Plan will likely occur as such development proceeds. Each such Person therefore agrees not to protest, challenge, or otherwise object to changes made or proposed by Declarant in the development plan or in the uses or density of property beyond that immediately adjacent to the Parcel in which such Person holds an interest in uses or density or changes in the Master Plan.

9.6. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

9.7. Exclusive Rights To Use Name of Development.

No Person shall use the name "Independence" or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Independence" in printed or promotional matter where such term is used solely to specify that particular property is located within Independence and the Association shall be entitled to use the words "Independence" in its name.

9.8. 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 property within the Properties, including Units and Parcels, and a perpetual nonexclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit or Parcel shall be only after reasonable notice to the Owner, and no entry into a structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

9.9. 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 constructed by Declarant or any Declarant Affiliate within the Properties in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant, or such Declarant Affiliate, involved in the design or construction first have been notified in writing and given an opportunity to meet with the Owner of the property to discuss the matter and conduct their own inspection pursuant to the rights reserved in Section 11.7.

9.10. Termination of Rights.

The rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased.

**Article X Easements**10.1. 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:

- (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;
  - (ii) suspend the right of an Owner or occupant to use facilities within the Common Area (A) for any period during which any charge against such Owner's Unit or Parcel remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer

period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;

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

(iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(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 XI.

Any Owner may extend his or her right of use and enjoyment to the tenants and occupants of such Owner's Parcel and their invitees, as applicable, subject to reasonable regulation by the Board. An Owner whose Parcel is leased shall be deemed to have assigned all such rights to the lessee for the period of the lease.

#### 10.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Parcel and any adjacent Common Area and between adjacent Parcels 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, 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.

#### 10.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. So long as Declarant or any Declarant Affiliate owns any property described in Exhibit "A" or "B" of this Declaration, Declarant reserves for itself and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, stormwater drainage systems, irrigation systems, sanitary sewer systems, street lights and signage on property which Declarant or any Declarant Affiliate owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 10.3(a)(i); and

(iii) access to read utility meters.

(b) Right to Grant Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any property described in



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Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in Sections 10.3(a) and (b) shall be performed in such a 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 Unit or Parcel, nor shall it unreasonably interfere with the use of any Unit or Parcel and, except in an emergency, entry onto any Unit or Parcel shall be made only after reasonable notice to the Owner or occupant.

#### 10.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, a perpetual, nonexclusive easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing any and all utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefitting from such easement is not made subject to this Declaration, Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

#### 10.5. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 6.2. The Association shall also have the right, but not the obligation, to enter upon any Unit or Parcel for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents including the Development Guidelines. 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.

#### 10.6. Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, improve, maintain, and repair structures and equipment used for retaining or draining water; and

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(c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area, Units and Parcels (but not the dwellings thereon) adjacent to or within 50 feet of bodies of water and wetlands within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

10.7. 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 Properties, including Parcels, and a perpetual, nonexclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Parcel shall be only after reasonable notice to the Owner, and no entry into a dwelling or building shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

10.8. Easement for Erosion Control.

Declarant reserves for itself, its successors and assigns, and grants to the Association a perpetual, non-exclusive easement to enter upon any portion of the Properties for the purpose of implementing such erosion control measures as Declarant or the Association deem necessary to prevent or correct soil erosion or siltation thereon; provided, nothing herein shall be deemed to create any liability or obligation on the part of Declarant or the Association to take exercise such easement or take any such action. Except in the case of an emergency threatening property or giving rise to a violation of law (in which case no prior notice or opportunity to cure shall be required), no person seeking to exercise this easement shall enter upon any Unit or Parcel unless such person has first given at least 10 days' written notice to the Owner of the Unit or Parcel specifying the action required and the Owner has failed to take the required action within such 10-day period. The Association may assess any costs which the Association incurs in undertaking erosion control measures on any Unit or Parcel pursuant to this Section against the Unit or Parcel and the Owner thereof as a Specific Assessment.

**Article XI Limited Common Areas**

11.1. 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

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Service Area or Service Areas. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians, turnabouts and closes, lakes and other portions of the Common Area within a particular Service Area or Service Areas. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Service Area Expense allocated among the Members representing the Service Area(s) to which the Limited Common Areas are assigned.

#### 11.2. Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Parcels and/or Service Areas, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 8.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area upon approval of the Board and the vote of Members representing a majority of the total Class "A" votes in the Association. Limited Common Area may be reassigned upon approval of the Members representing those Parcels to which the Limited Common Area is assigned and the approval of the Members representing those Parcels to which it is to be reassigned. As long as Declarant or any Declarant Affiliate owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1, any such assignment or reassignment shall also require Declarant's written consent.

#### 11.3. Use by Others.

Upon approval of a majority of Members representing Parcels within the Service Area to which any Limited Common Area is assigned, the Association may permit Owners of Parcels in other Service Areas to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

### **Article XII Party Walls and Other Shared Structures**

#### 12.1. General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Parcels which serves and/or separates any two adjoining Parcels shall constitute a party structure. 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 thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIII.

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

#### 13.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association, Developer Members, Parcel Association Members and their officers, directors, and committee members; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Properties 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 Section 13.1(b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 13.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating 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 Properties, other than matters of aesthetic judgment under Article III, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2:

- (i) any suit by the Association to collect Assessments or other amounts due from any Member;
- (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 Part Two of this Declaration (relating to creation and maintenance of community standards);
- (iii) any suit between Members, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (iv) any suit in which any indispensable party is not a Bound Party; and
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.
- (vi) any suit related to the enforcement of Declarant's rights with respect to Parcel Covenants as provided in Section 9.1 hereof.

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13.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the 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 parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 13.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity 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 Savannah, Georgia area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for 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 Parties do not settle the Claim within 30 days after submission of 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 Party shall bear its own costs of the mediation, including attorney's fees, 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 parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all

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such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney's fees and court costs.

13.3. 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 unless first approved by a vote of Members entitled to cast 75% of the total Class "A", except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, 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.

**Article XIV Private Amenities**

Various properties within, adjacent to, or in the vicinity of the Properties may be privately owned and operated for recreational purposes by Persons other than the Association ("Private Amenities"). Access to and use of any Private Amenity is strictly subject to the rules and procedures of the owner of such Private Amenity, and except as may otherwise be set forth in a written agreement between the Association and the owner of the Private Amenity, no Person gains any right to enter or to use any Private Amenity solely by virtue of membership in the Association or ownership or occupancy of a Unit or Parcel.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Developer, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership, operation or availability of any Private Amenity. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether. No consent of the Association, any Additional Association, the Members, or any Owner shall be required to effectuate any change in ownership, operation or terms of access to any Private Amenity.

No person shall fish, swim, wade, play, or retrieve golf balls from lakes, ponds or streams within any Private Amenity without the permission of the owner of such Private Amenity. No private golf carts, bicycles, wagons, etc., and no running, jogging, walking, skating, or roller blading, shall be permitted on any golf course or other property comprising a Private Amenity (except where golf cart paths cross over or share streets or Common Area paths or trails within the Properties) without the express consent of the owner of the Private Amenity.

#### Article XV Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Parcels in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

##### 15.1. Notices of Action.

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 Unit or Parcel 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 Properties or which affects any Unit or Parcel on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit or Parcel subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or Parcel or the Owner or Occupant which is not cured within 60 days; or

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

##### 15.2. No Priority.

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

##### 15.3. Notice to Association.

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

##### 15.4. 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

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

#### Article XVI Covenant to Share Costs

The Declarant shall have the authority to cause the Association to enter into a Covenant to Share Costs with any Developer Member or Parcel Association providing for a reasonable allocation between the parties, considering the benefits and burdens to each party, of the costs of providing shared services or benefits, and maintaining, operating, insuring and replacing any property and facilities owned or maintained by one party and made available for use by, or providing a common benefit to the members of each. Such shared services and properties may include, but need not be limited to, security services; transportation systems; stormwater management; parks and trails; irrigation systems; and landscaping, community entry monumentation, and traffic and directional signage along roads within Independence. Any such Covenant to Share Costs may also establish such easements over the Properties as may reasonably be necessary to provide such shared benefits and services. All costs allocated to the Association under any such Covenant to Share Costs shall be a Common Expense of the Association and assessed against each Parcel in accordance with Article VIII, except that the Association's share of any costs associated with shared benefits or services made available only to the Owners within particular Service Areas shall be allocated as a Service Area assessment against only the Parcels within the benefitted Service Area(s).

#### Article XVII Changes in Ownership or Use of Parcels

##### 17.1. Changes in Ownership.

*Notation Fee*

Any Owner desiring to sell or otherwise transfer title to his or her Parcel shall give the Board at least seven-days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. In addition, any Owner selling or transferring title to his or her Parcel shall forward any notice or assessment invoice to the purchaser or transferee of the Parcel until such notice is received by the Association.

#### Article XVII Changes in Common Area

##### 18.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant or any Declarant Affiliate owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 8.1) by any authority having the power of condemnation or eminent domain, 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. Such award or proceeds shall be payable to the Association to be disbursed as follows.

If the taking or conveyance involves a portion of the 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 available, unless within 60 days after such taking



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Declarant, so long as Declarant or any Declarant Affiliate owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 8.1, and Members representing at least 75% of the total Class "A" votes and the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.4(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or 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.

By virtue of membership in the Association, each Owner is estopped from protesting, challenging, or otherwise contesting any action of the Association taken pursuant to this Section.

18.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for the partition of any portion of the Common Area without the written consent of all the Declaration Members and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

18.3. Transfer or Dedication of Common Area.

The Association, acting through the Board, may dedicate portions of the Common Area to the City of Hinesville or Bryan County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity or to any organization which is tax-exempt under the provisions of Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code.

**Article XIX Amendment of Declaration**

19.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, or so long as Declarant or any Declarant Affiliate owns any property described on Exhibit "A" or "B," Declarant may unilaterally amend this Declaration for any purpose; provided, such amendment may not materially adversely effect title to a Parcel without the consent of the Parcel Owner or materially alter the assessment allocation formula without the consent of Members representing at least 50% of the Class "A" votes in the Association. Thereafter, Declarant may unilaterally amend this 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 Parcels; or (c) to satisfy the requirements of any local, state or federal governmental agency

19.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 75% of the total Class "A" votes in the Association, and

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the consent of Declarant, so long as Declarant or any Declarant Affiliate owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall be at least 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 or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

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

Any amendment shall 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 months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

19.4. Exhibits.

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

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IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

Signed, sealed and delivered this  
21<sup>st</sup> day of February,  
~~2006~~ in the presence of:  
2007

A. H. O.  
Unofficial Witness  
Sherril A. Fincham  
Notary Public

**DECLARANT:**

**HORSE CREEK PARTNERS, LLC, a**  
Georgia limited liability company

By: [Signature]  
William L. Nitting, Authorized Member

My Commission Expires:  
3/6/09

[NOTARIAL SEAL]



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Exhibit "A"

**Property Initially Submitted**

THIS EXHIBIT "A" is made a part of that certain Declaration of Covenants, Conditions and Restrictions for Independence to which this Exhibit "A" is attached, and provides for all purposes a description of the real property initially submitted to the provisions of the Declaration, to wit:

- (1) That portion of the below described Horse Creek Parcel owned by Horse Creek Partners, LLC as of the date of the Declaration to which this Exhibit "A" is attached, lying within five hundred feet of the southern right-of-way line of "15<sup>th</sup> Street," but excluding any property owned by Horse Creek Partners, LLC lying to the north of said 15<sup>th</sup> Street.

**Horse Creek Parcel**

All that certain lot, tract or parcel of land situate, lying and being in the 1756th G. M. District of Liberty County, Georgia, being known and designated as "Tract 1," "Tract 2," "Tract 3," and "Tract 4," containing in the aggregate 2686.187 acres, more or less, as shown and represented on that certain plat of survey made and prepared by Charles H. Tomberlin, Georgia Registered Land Surveyor No. 2973, dated October 9, 2004, and recorded in Plat Section N70, page 4CD, in the Office of the Clerk of Superior Court of Liberty County, Georgia.

- (2) The property initially submitted to the provisions of the Declaration shall also include all the following:

**Black Bucket Construction Parcel:**

Lots 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 108, 109, 110, 111, 112, 113, and 114, as shown on the below described Survey; and

**B & B Parcel:**

Lots 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 83, 84, 85, 86, 87, 88, 89, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, and 107, as shown on the below described Survey; and

**Black Bucket Enterprises Parcel:**

All that certain lot, tract or parcel of land situate, lying and being in the 1756th G. M. District of Liberty County, Georgia, and being in the City of Hinesville, and being shown and designated as "Phase I, Governor's Quarters" on that certain plat of survey made and prepared by Adolph N.

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Michelis, Georgia Registered Land Surveyor No. 1323, bearing a date of August 1, 2006, and recorded in Plat Book O15, page 3CD, in the Office of the Clerk of Superior Court of Liberty County, Georgia, which plat of survey is incorporated herein by specific reference for descriptive and all other purposes (the "Survey"), and not included within the Black Bucket Construction Parcel and B & B Parcel.

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**Property Subject to Annexation**

THIS EXHIBIT "B" is made a part of that certain Declaration of Covenants, Conditions and Restrictions for Independence to which this Exhibit "B" is attached, and provides for all purposes a description of the real property initially submitted to the provisions of the Declaration, to wit:

- (1) That portion of the below described Horse Creek Parcel not submitted to the provisions of the Declaration as described in Exhibit "A."

**Horse Creek Parcel**

All that certain lot, tract or parcel of land situate, lying and being in the 1756th G. M. District of Liberty County, Georgia, being known and designated as "Tract 1," "Tract 2," "Tract 3," and "Tract 4," containing in the aggregate 2686.187 acres, more or less, as shown and represented on that certain plat of survey made and prepared by Charles H. Tomberlin, Georgia Registered Land Surveyor No. 2973, dated October 9, 2004, and recorded in Plat Section N70, page 4CD, in the Office of the Clerk of Superior Court of Liberty County, Georgia.

- (2) All property lying within a ten (10) mile radius of the above-described Horse Creek Parcel shall also be eligible for annexation under the provisions of the Declaration.

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 EXHIBIT "C"

**Formula For Determining Liability for Assessments and Voting Rights**

**1. Determination of Equivalent Units Per Parcel.** Assessment obligations and voting rights for Parcels shall be based upon the number of "Equivalent Units" assigned to a particular Parcel relative to all other Parcels subject to assessment. Each Parcel shall be assigned "Equivalent Units" based upon the land use classification into which it falls as determined by the current Master Plan, as it may be modified from time to time to reflect actual use. In the event that the land use classification for a particular Parcel is not clear, the Board's determination of land use classification shall be controlling; provided, the land use classification of a Parcel hereunder shall not be changed once established unless there has been a change in the predominant use of the Parcel.

<u>Land Use Classification</u>	<u>Equivalent Units per Parcel</u>
Single family residential units ( including townhomes and condominiums)	1 per Unit comprising the Parcel *
Residential rental apartments (occupied or certified for occupancy by appropriate governmental authority)	.5 per Unit comprising the Parcel *
All other Parcels, including Parcels designated for commercial development, but excluding unimproved Parcels owned by Declarant or a Declarant Affiliate	5 per 1 acre of land comprising the Parcel *
Unimproved Parcels owned by Declarant or a Declarant Affiliate (those which have not been improved with improvements or infrastructure other than roads and sidewalks, or utilities)	0 per 1 acre of land comprising the Parcel for the purpose of determining assessment obligations and 1 per 1 acre of land comprising the Parcel for the purpose of determining voting rights *

\* (rounded up to the nearest 1/10th)

For purposes of determining the acreage of each Parcel, any area designated by the U.S. Army Corps of Engineers as "wetlands" under Section 404 of the Clean Water Act or any state or local law or regulation affecting the use of such wetlands shall be excluded.

**2. Calculation of Assessments and Votes.** The Base Assessment and any Special Assessment for Common Expenses shall be determined for each Parcel by multiplying the total amount of the assessment by a fraction, the numerator of which is the number of Equivalent Units assigned to the particular Parcel and the denominator of which is the total number of Equivalent Units assigned to all Parcels subject to such assessment; provided that Technology Assessments

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shall be determined as set forth in Sections 6.9 and 7.9 of the Declaration. The votes attributable to each Parcel shall be equal to the number of Equivalent Units assigned to the Parcel.

3. **Computation by Declarant.** The Land Use Classification and number of Equivalent Units assigned to each Parcel, and the percentage of assessments to be levied on each Parcel subject to assessment shall be computed at least annually by the Board as of a date which is not less than 60 days prior to the beginning of each fiscal year. If the use of the Parcel changes during the fiscal year, the Board shall be authorized to adjust the assessment against the Parcel effective with such change in use, but the Board need not reallocate assessments against all Parcels to take into account such change until the budget is redetermined. Notice of the percentages for each Parcel (including a summary of the computations) shall be sent to each Member together with the notice of the assessment.

In the event that additional real property is made subject to this Declaration between annual cutoff dates for computation of Equivalent Units, the Board shall re-compute the assessment and voting percentages for each Parcel and send notice of such re-computed percentages to each Member; provided, no adjustments shall be made in any assessments previously levied to reflect such re-computation.



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[ Declaration of Covenants, Conditions and Restrictions for Independence – Cont. ]

**JOINDER TO DECLARATION**

THIS JOINDER TO DECLARATION (hereinafter referred to as the "Joinder") is made and published as of the 9th day of February, 2007 by **BLACK BUCKET ENTERPRISES, LLC**, a limited liability company organized and existing under the laws of the State of Georgia (hereinafter referred to as "**Black Bucket Enterprises**").

**WITNESSETH:**

**WHEREAS**, Black Bucket Enterprises is the owner of certain property lying within the Properties and more particularly described as the "Black Bucket Enterprises Parcel" on **Exhibit "A"** (the "**Black Bucket Enterprises Parcel**") to the Declaration to which this Joinder is made a part of for all purposes; and

**WHEREAS**, Black Bucket Enterprises has agreed to submit the Black Bucket Enterprises Parcel to certain covenants, conditions, restrictions, easements, and other provisions of the Declaration, and now desires to formally memorialize the same.

**NOW THEREFORE**, incorporating the foregoing recitals, and for and in consideration of the benefits to be derived by Black Bucket Enterprises and each and every subsequent owner of the Black Bucket Enterprises Parcel, or any portion thereof, Black Bucket Enterprises hereby subjects the Black Bucket Enterprises Parcel to the those certain covenants, conditions, restrictions, and easements set forth in the Declaration relating to development guidelines, Parcel maintenance, Telecommunications Assessments, the Master Telecommunications System, and easement rights reserved to Declarant (to include, without limitation, Articles 3, 4, 6, and 10, and Sections 6.9 and 7.9), as well as any and all covenants and provisions of the Declaration necessarily implicated by said provisions or required for their full implementation and enforcement, and declares that the Black Bucket Enterprises Parcel shall be held, transferred, sold, conveyed, used, occupied and mortgaged and otherwise encumbered subject to said covenants, conditions, restrictions, and easements in accordance with the provisions of the Declaration, and shall otherwise constitute a part of the Properties described in said Declaration. By this Joinder, Black Bucket Enterprises also appoints Declarant as its attorney-in-fact to take any action and to execute any joinder, document, or other instrument which may now or hereafter be necessary (or deemed desirable by Declarant) to formally subject the Black Bucket Enterprises Parcel to the provisions of the Declaration. Without limiting the foregoing, Black Bucket Enterprises specifically consents to the provisions of the Declaration pertaining to the establishment and operation by Declarant or the Association of a Master Telecommunications Systems and the imposition and collection of Technology Assessments relating thereto.

In this connection, it is specifically acknowledged that, as of the date of this Declaration, the Parcel Association for the Black Bucket Enterprises Parcel and the Owners within said Black Bucket Enterprises Parcel (and Members of said Association) have been

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granted limited membership rights in the Master Association on a non-voting basis for the purpose of establishing and operating the Master Telecommunications System, and subjecting the Black Bucket Enterprises Parcel and the Unit Owners therein to the restrictions, assessments (including Technology Assessments), covenants, easements, conditions, and provisions of the Declaration relating to said Master Telecommunications System. The Parcel Association for the Black Bucket Enterprises Parcel and the Unit Owners within said Black Bucket Enterprises Parcel (and Members of said Parcel Association) shall have no rights or obligations with respect to the Declaration except as they relate to the Master Telecommunication System or as otherwise provided herein for in the Declaration or the Parcel Covenants for the Black Bucket Enterprises Parcel. Notwithstanding the foregoing, Black Bucket Enterprises, LLC or its successor declarant under the Parcel Covenants for the Black Bucket Enterprises Parcel may, at anytime within one hundred twenty (120) months voluntarily submit the Black Bucket Enterprises Parcel and all Units therein to the full provisions of the Declaration, which submission shall be memorialized by a Supplemental Declaration prepared by the Declarant and executed by Black Bucket Enterprises, LLC or its successor declarant, as well as the Parcel Association for the Black Bucket Enterprises Parcel, and the Declarant. Following submission, the Parcel Association for the Black Bucket Enterprises Parcel, and all portions of the Black Bucket Parcel (including, without limitation, all Units therein) shall be entitled to all of the privileges and rights granted by membership in the Association and subject to all obligations imposed by such membership, all as set forth in said Supplemental Declaration. Until such time as full membership in the Association is granted, the Parcel Association for the Black Bucket Enterprises Parcel and Members of said Parcel Association shall not be entitled to the use or enjoyment of any private or common amenity within the Properties (except for the Telecommunications System).

All capitalized terms appearing in this Joinder shall have those meanings ascribed to them in the Declaration to which this Joinder is attached, and which by this reference is made a part hereof for all purposes.

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[ Joinder to Declaration of Covenants, Conditions and Restrictions for Independence ]

IN WITNESS WHEREOF, Black Bucket Enterprises has executed this Joinder by causing its name to be hereunto subscribed by its duly authorized officer or agent and by causing its seal to be impressed hereon, all being done as of the day and year first above written.

**BLACK BUCKET ENTERPRISES, LLC,**  
a Georgia limited liability company

By: *J. A. Fry*  
Jacques A. Fry, Manager

Signed, sealed and delivered  
in the presence of

*[Signature]*  
Witness

*Sherril A. Finckam*  
Notary Public  
My Commission Expires: 3/6/09  
(NOTARY SEAL)



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[ Declaration of Covenants, Conditions and Restrictions for Independence – Cont. ]

**JOINDER TO DECLARATION**

THIS JOINDER TO DECLARATION (hereinafter referred to as the "Joinder") is made and published as of the 9th day of February, 2007 by **BLACK BUCKET CONSTRUCTION, LLC**, a limited liability company organized and existing under the laws of the State of Georgia (hereinafter referred to as "**Black Bucket Construction**").

**WITNESSETH:**

**WHEREAS**, on or about September 13, 2006, Black Bucket Enterprises, LLC sold to Black Bucket Construction certain property lying within the Properties and more particularly described as the "Black Bucket Construction Parcel" on Exhibit "A" (the "**Black Bucket Construction Parcel**") to the Declaration to which this Joinder is made a part of for all purposes; and

**WHEREAS**, as a part of its acceptance of the Black Bucket Construction Parcel, Black Bucket Construction agreed to submit the Black Bucket Construction Parcel to certain covenants, conditions, restrictions, easements, and other provisions of the Declaration, and now desires to formally memorialize the same.

**NOW THEREFORE**, incorporating the foregoing recitals, and for and in consideration of the benefits to be derived by Black Bucket Construction and each and every subsequent owner of the Black Bucket Construction Parcel, or any portion thereof, Black Bucket Construction hereby subjects the Black Bucket Construction Parcel to the those certain covenants, conditions, restrictions, and easements set forth in the Declaration relating to development guidelines, Parcel maintenance, Telecommunications Assessments, the Master Telecommunications System, and easement rights reserved to Declarant (to include, without limitation, Articles 3, 4, 6, and 10, and Sections 6.9 and 7.9), as well as any and all covenants and provisions of the Declaration necessarily implicated by said provisions or required for their full implementation and enforcement, and declares that the Black Bucket Construction Parcel shall be held, transferred, sold, conveyed, used, occupied and mortgaged and otherwise encumbered subject to said covenants, conditions, restrictions, and easements in accordance with the provisions of the Declaration, and shall otherwise constitute a part of the Properties described in said Declaration. By this Joinder, Black Bucket Construction also appoints Declarant as its attorney-in-fact to take any action and to execute any joinder, document, or other instrument which may now or hereafter be necessary (or deemed desirable by Declarant) to formally subject the Black Bucket Construction Parcel to the provisions of the Declaration. Without limiting the foregoing, Black Bucket Construction specifically consents to the provisions of the Declaration pertaining to the establishment and operation by Declarant or the Association of a Master Telecommunications Systems and the imposition and collection of Technology Assessments relating thereto.

In this connection, it is specifically acknowledged that, as of the date of this

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Declaration, the Parcel Association for the Black Bucket Construction Parcel and the Owners within said Black Bucket Construction Parcel (and Members of said Association) have been granted limited membership rights in the Master Association on a non-voting basis for the purpose of establishing and operating the Master Telecommunications System, and subjecting the Black Bucket Construction Parcel and the Unit Owners therein to the restrictions, assessments (including Technology Assessments), covenants, easements, conditions, and provisions of the Declaration relating to said Master Telecommunications System. The Parcel Association for the Black Bucket Construction Parcel and the Unit Owners within said Black Bucket Construction Parcel (and Members of said Parcel Association) shall have no rights or obligations with respect to the Declaration except as they relate to the Master Telecommunication System or as otherwise provided herein for in the Declaration or the Parcel Covenants for the Black Bucket Construction Parcel. Notwithstanding the foregoing, Black Bucket Enterprises, LLC or its successor declarant under the Parcel Covenants for the Black Bucket Construction Parcel may, at anytime within one hundred twenty (120) months voluntarily submit the Black Bucket Construction Parcel and all Units therein to the full provisions of the Declaration, which submission shall be memorialized by a Supplemental Declaration prepared by the Declarant and executed by Black Bucket Enterprises, LLC or its successor declarant, as well as the Parcel Association for the Black Bucket Construction Parcel, and the Declarant. Following submission, the Parcel Association for the Black Bucket Construction Parcel, and all portions of the Black Bucket Parcel (including, without limitation, all Units therein) shall be entitled to all of the privileges and rights granted by membership in the Association and subject to all obligations imposed by such membership, all as set forth in said Supplemental Declaration. Until such time as full membership in the Association is granted, the Parcel Association for the Black Bucket Construction Parcel and Members of said Parcel Association shall not be entitled to the use or enjoyment of any private or common amenity within the Properties (except for the Telecommunications System).

All capitalized terms appearing in this Joinder shall have those meanings ascribed to them in the Declaration to which this Joinder is attached, and which by this reference is made a part hereof for all purposes.

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[ Joinder to Declaration of Covenants, Conditions and Restrictions for Independence ]

IN WITNESS WHEREOF, Black Bucket Construction has executed this Joinder by causing its name to be hereunto subscribed by its duly authorized officer or agent and by causing its seal to be impressed hereon, all being done as of the day and year first above written.

**BLACK BUCKET CONSTRUCTION, LLC,**  
a Georgia limited liability company

By: [Signature]  
Name: JACQUES A. FERN  
Title: MANAGER

Signed, sealed and delivered  
in the presence of

: [Signature]

Witness

[Signature]  
Notary Public  
My Commission Expires: 3/6/09  
(NOTARY SEAL)



[ Joinder(s) Continued on Following Page(s) ]

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[ Declaration of Covenants, Conditions and Restrictions for Independence – Cont. ]

**JOINDER TO DECLARATION**

THIS JOINDER TO DECLARATION (hereinafter referred to as the "Joinder") is made and published as of the 9th day of February, 2007 by **B & B PROPERTIES, L.L.C.**, a limited liability company organized and existing under the laws of the State of Georgia (hereinafter referred to as "**B & B Properties**").

**WITNESSETH:**

**WHEREAS**, on or about September 13, 2006, Black Bucket Enterprises, LLC sold to B & B Properties certain property lying within the Properties and more particularly described as the "B & B Parcel" on Exhibit "A" (the "**B & B Parcel**") to the Declaration to which this Joinder is made a part of for all purposes; and

**WHEREAS**, as a part of its acceptance of the B & B Parcel, B & B Properties agreed to submit the B & B Parcel to the covenants, conditions, restrictions, easements, and other provisions of the Declaration, and now desires to formally memorialize the same.

**NOW THEREFORE**, incorporating the foregoing recitals, and for and in consideration of the benefits to be derived by B & B Properties and each and every subsequent owner of the B & B Parcel, or any portion thereof, B & B Properties hereby subjects the B & B Parcel to the those certain covenants, conditions, restrictions, and easements set forth in the Declaration relating to development guidelines, Parcel maintenance, Telecommunications Assessments, the Master Telecommunications System, and easement rights reserved to Declarant (to include, without limitation, Articles 3, 4, 6, and 10, and Sections 6.9 and 7.9), as well as any and all covenants and provisions of the Declaration necessarily implicated by said provisions or required for their full implementation and enforcement, and declares that the B & B Parcel shall be held, transferred, sold, conveyed, used, occupied and mortgaged and otherwise encumbered subject to said covenants, conditions, restrictions, and easements in accordance with the provisions of the Declaration, and shall otherwise constitute a part of the Properties described in said Declaration. By this Joinder, B & B Properties also appoints Declarant as its attorney-in-fact to take any action and to execute any joinder, document, or other instrument which may now or hereafter be necessary (or deemed desirable by Declarant) to formally subject the B & B Parcel to the provisions of the Declaration. Without limiting the foregoing, B & B Properties specifically consents to the provisions of the Declaration pertaining to the establishment and operation by Declarant or the Association of a Master Telecommunications Systems and the imposition and collection of Technology Assessments relating thereto.

In this connection, it is specifically acknowledged that, as of the date of this Declaration, the Parcel Association for the B & B Parcel and the Owners within said B & B Parcel (and Members of said Association) have been granted limited membership rights in the Master Association on a non-voting basis for the purpose of establishing and operating the

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Master Telecommunications System, and subjecting the B & B Parcel and the Unit Owners therein to the restrictions, assessments (including Technology Assessments), covenants, easements, conditions, and provisions of the Declaration relating to said Master Telecommunications System. The Parcel Association for the B & B Parcel and the Unit Owners within said B & B Parcel (and Members of said Parcel Association) shall have no rights or obligations with respect to the Declaration except as they relate to the Master Telecommunication System or as otherwise provided herein for in the Declaration or the Parcel Covenants for the B & B Parcel. Notwithstanding the foregoing, Black Bucket Enterprises, LLC or its successor declarant under the Parcel Covenants for the B & B Parcel may, at anytime within one hundred twenty (120) months voluntarily submit the B & B Parcel and all Units therein to the full provisions of the Declaration, which submission shall be memorialized by a Supplemental Declaration prepared by the Declarant and executed by Black Bucket Enterprises, LLC or its successor declarant, as well as the Parcel Association for the B & B Parcel, and the Declarant. Following submission, the Parcel Association for the B & B Parcel, and all portions of the Black Bucket Parcel (including, without limitation, all Units therein) shall be entitled to all of the privileges and rights granted by membership in the Association and subject to all obligations imposed by such membership, all as set forth in said Supplemental Declaration. Until such time as full membership in the Association is granted, the Parcel Association for the B & B Parcel and Members of said Parcel Association shall not be entitled to the use or enjoyment of any private or common amenity within the Properties (except for the Telecommunications System).

All capitalized terms appearing in this Joinder shall have those meanings ascribed to them in the Declaration to which this Joinder is attached, and which by this reference is made a part hereof for all purposes.

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[ Joinder to Declaration of Covenants, Conditions and Restrictions for Independence ]

IN WITNESS WHEREOF, B & B Properties has executed this Joinder by causing its name to be hereunto subscribed by its duly authorized officer or agent and by causing its seal to be impressed hereon, all being done as of the day and year first above written.

**B & B PROPERTIES, L.L.C.,**  
A Georgia limited liability company

By: Michael Byrd  
Name: Michael Byrd  
Title: Vice-President

Signed, sealed and delivered  
in the presence of:

R. H. [Signature]  
Witness

Sherril A. Finckam  
Notary Public  
My Commission Expires: 3/6/09  
(NOTARY SEAL)



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