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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
HEARTLAND

~~Upon recording, please refer to:
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Subject Matter

"A"

Lead Initially Submitted

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

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made as of the date set forth on the signature page hereof by Heartland, Inc., a Georgia nonprofit corporation (the "Declarant").

Declarant is the owner of the real property described on Exhibit "A," which is attached and incorporated by reference, or, if Declarant is not the owner, such owner has consented to this Declaration. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Heartland of Campbell-Stone, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (capitalized terms are defined in Article 1 below).

Declarant hereby declares that all of the property described on Exhibit "A" and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

This document does not and is not intended to create a condominium within the meaning of the O.C.G.A. §44-3-70, et seq. nor a property owners' development within the meaning of the O.C.G.A. §44-3-220, et seq.

ARTICLE 1: DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.1. "**AC**": The Admissions Committee, as described in Section 14.1.
- 1.2. "**Additional Property**": Any real property which is not described on Exhibit "A" and is, subsequent to the recording of this Declaration, subjected to the terms of this Declaration in accordance with Article 6.
- 1.3. "**Apartment Unit**": A Unit which is leased from the Association pursuant to an Apartment Residency Agreement or similar document.
- 1.4. "**ARB**": The Architectural Review Board, as described in Section 8.2.

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- 1.5. **"Area of Common Responsibility"**: The Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or other applicable covenant, contract, or agreement.
- 1.6. **"Articles of Incorporation" or "Articles"**: The Articles of Incorporation of Heartland of Campbell-Stone, Inc., as filed with the Secretary of State of the State of Georgia.
- 1.7. **"Association"**: Heartland of Campbell-Stone, Inc., a Georgia nonprofit corporation, its successors or assigns.
- 1.8. **"Board of Directors" or "Board"**: The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Georgia corporate law.
- 1.9. **"By-Laws"**: The By-Laws of Heartland of Campbell-Stone, Inc., as they may be amended.
- 1.10. **"Common Area"**: All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners. The term also shall include the Exclusive Common Area, as defined below.
- 1.11. **"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.
- 1.12. **"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Architectural Review Board.
- 1.13. **"Cost Sharing Agreement"**: Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Properties, including any Private Amenity, for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or operator of such property.
- 1.14. **"Days"**: Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.
- 1.15. **"Declarant"**: Heartland, Inc., a Georgia nonprofit corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" or any Additional Property subjected to this Declaration for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) "Declarant" hereunder at any time.
- 1.16. **"Design Guidelines"**: The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 8.
- 1.17. **"Development Period"**: The period of time during which the Declarant owns any property which is subject to this Declaration or any Private Amenity. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

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1.18. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one (1) or more, but less than all, Units, as more particularly described in Article 2.

1.19. "General Assessment": Assessments levied on all Units subject to assessment under Article 7 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 7.1 and 7.3.

1.20. "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the rules of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be amended from time to time.

1.21. "Heartland": That certain mixed use commercial and residential retirement community located in Barrow County, Georgia and commonly known and referred to as Heartland.

1.22. "Master Plan": The land use plan or development plan for "Heartland," as such plan may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of any Additional Property that Declarant may from time to time subject to this Declaration. Inclusion of property on the Master Plan which is not described in Exhibit "A" shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of any property from the Master Plan bar its later annexation in accordance with Article 6.

1.23. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.24. "Mortgagee": A beneficiary or holder of a Mortgage.

1.25. "Owner": One (1) or more Persons who hold the record title to any Unit, including the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.26. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.27. "Private Amenity": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties which are owned and operated, in whole or in part, by Persons other than the Association for recreational, health care or other purposes. Any Private Amenity shall be designated by the Declarant in its sole discretion. The use of the term "Private Amenity" shall not be construed to imply or require a private club. Private Amenities may be operated on a club membership, daily fee, use fee, public, or private basis or otherwise.

1.28. "Properties": The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 6.

1.29. "Public Records": The Clerk of the Superior Court of Barrow County, Georgia or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

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1.30. "Resident": One (1) or more Persons who are Owners and who reside in a Unit or who are leasing an Apartment Unit, including the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is owned or leased by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Resident.

1.31. "Special Assessment": Assessments levied in accordance with Section 7.5.

1.32. "Specific Assessment": Assessments levied in accordance with Section 7.6.

1.33. "Supplemental Declaration": An instrument filed in the Public Records which subjects Additional Property to this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.34. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently leased or owned and conveyed and which 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. The term shall include within its meaning, by way of illustration but not limitation, rowhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately planned lots, as well as vacant land intended for development as such, but shall not include Common Area or property dedicated to the public. In the case of a building containing multiple dwellings, each dwelling shall be deemed to be a separate Unit, even though said building may be owned by a common Owner.

In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Unit until such time as a plat is filed with respect to all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

ARTICLE 2: PROPERTY RIGHTS

2.1. Common Area. Every Resident shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Unit, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Association to rent, lease or reserve any portion of the Common Area to any Resident for the exclusive use of such Resident and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;

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(e) The right of the Board to suspend the right of a Resident to use any recreational and social facilities within the Common Area pursuant to Section 3.3;

(f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;

(g) The right of the Board to permit use of any facilities situated on the Common Area by persons other than Residents, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(i) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

(j) The rights of certain Residents to the exclusive use, access and enjoyment of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.3; and

(k) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 12.

Any Resident may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board.

2.2. **Private Streets.** Every Resident shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads within the Properties ("Private Streets"), whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit, subject to:

(a) This Declaration and all other Governing Documents;

(b) The right of the Declarant, so long as the Declarant owns the Private Streets, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that the Declarant shall not by the adoption of any rule or regulation bar access of the Residents across the Private Streets;

(c) The right of the Declarant to dedicate all or any part of Private Streets;

(d) The right of the Declarant to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Residents contained in this Section; and

(e) The rights of the Declarant to maintain the Private Streets.

Any Resident may extend his or her right of use and enjoyment of the Private Streets to the members of his or her family, lessees, and social invitees, as applicable.

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2.3. **Exclusive Common Area.** Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Residents and occupants of specified Units. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, roads, landscaped medians and cul-de-sacs, ponds, lakes and other portions of the Common Area. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Residents of Units to which the Exclusive Common Areas are assigned as a Specific Assessment.

Initially, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Association, or in this Declaration, or any Supplemental Declaration and/or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units during the Development Period. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of particular Units and Exclusive Common Area may be reassigned upon approval of the Board.

2.4. **No Partition.** Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.5. **Condemnation.** The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Residents in such matters. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of and under threat of condemnation, the award made for such taking or proceeds of such conveyance shall be payable to the Association.

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 sixty (60) days after such taking the Board, and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ARB. The provisions of Section 5.1(c) regarding funds for the repair of damage or destruction 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 may be used by the Association for such purposes as the Board shall determine.

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ARTICLE 3: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION



3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 9. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia. Furthermore, it is the intention of Declarant to pursue qualification of the Association as a tax-exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Code. Should such status be granted to the Association, the affairs of the Association shall at all times be conducted in a manner as to assure its qualification for exemption from federal income taxation pursuant of Section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future tax code and, in furtherance thereof, no part of the Association's earnings shall inure to any private party; the Association shall not attempt to influence legislation, engage in propaganda, or support any candidate for political office; and the Association shall not engage in any but insubstantial noncharitable activities.

3.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibit "A" or on the Additional Property, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of the Association and the Residents subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake, pond or other body of water that may be conveyed. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

3.3. Enforcement.

(a) The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth herein. Such sanctions may include, without limitation: (i) imposing monetary fines which shall constitute a lien upon the Unit of the violator. (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Resident shall pay the fine upon notice from the Board.); (ii) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;

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(iii) suspending any Person's right to use any recreational and social facilities within the Common Area, provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit; and
 (iv) suspending any services provided by the Association to a Resident or the Resident's Unit if the Resident is more than thirty (30) Days delinquent in paying any assessment or other charges owed to the Association.

In the event that any occupant, guest or invitee of a Unit violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Resident of the Unit that the violator is occupying or visiting.

(b) Due Process Procedure.

(i) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth herein, the Board or its delegate shall serve the alleged violator with written notice including (1) the nature of the alleged violation, (2) the proposed sanction to be imposed, (3) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed, within fifteen (15) Days of the notice; and (4) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) Days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided however, the Board or covenants committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) Day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) Day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or covenants committee may impose a sanction without further notice to the violator.

(ii) Hearing. If a hearing is requested within the allotted fifteen (15) Day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may adopt a schedule of sanctions for violations of the Governing Documents.

(iii) Appeal. If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within fifteen (15) Days after the hearing date.

(c) Other Remedies.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the due process procedures set forth herein. The Association may levy a Specific Assessment to cover all costs incurred in bringing a Unit into compliance with the terms of the Governing Documents.

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The Association may also elect to enforce any provisions of the Governing Documents by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth herein.

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

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county, city, state and federal ordinances, if applicable, and permit local and other governments to enforce ordinances on the Properties for the benefit of the Association and the Residents.

3.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board, without consent of the Residents.

3.5. Governmental Interests. During the Development Period, the Declarant may designate sites within the Properties for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. No Resident approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

3.6. Indemnification. The Association shall indemnify every officer, director, ARB member and committee member against all damages, liabilities, and expenses, including reasonable attorneys fees, 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, ARB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Georgia law.

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The officers, directors, ARB members 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, directors, ARB members, and committee members 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. The Association shall indemnify and forever hold each such officer, director, ARB member 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, ARB member 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.

3.7. Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to the City of Winder, Barrow County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity.

3.8. Security. Each Resident and occupant of a Unit, 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 make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them 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 fire protection system, burglar alarm system or other security system or measure, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Resident acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

3.9. Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

3.10. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Residents by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, and other computer related

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services, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Residents, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

ARTICLE 4: MAINTENANCE

4.1. Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

- (i) all Common Area;
- (ii) all landscaping and other flora, parks, lakes, ponds, structures, and improvements, including any entry features, private streets, parking areas, sidewalks, bike and pedestrian pathways/trails, tennis courts and swimming pools situated upon the Common Area;
- (iii) all furnishings, equipment and other personal property of the Association;
- (iv) any landscaping and other flora, parks, bike and pedestrian pathways/trails, sidewalks, buffers, entry features, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;
- (v) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or any contract or agreement for maintenance thereof entered into by the Association;
- (vi) all ponds, lakes, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith unless such facilities are located within a Private Amenity and are maintained by the owner of the Private Amenity; and
- (vii) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and the Residents, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be 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, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) 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 sole discretion

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of the Board, to perform required maintenance or repairs, unless the Board, and, during the Development Period, the Declarant agree in writing to discontinue such operation.

(c) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to a Resident or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice 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 the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Specific Assessment against the particular Units to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(e) The Association shall maintain, repair, and replace the exterior and roofs of the dwellings on the Units and maintain exterior landscaping and other flora within the front and side yards of those Units designated in the Governing Documents to receive such services. The "front and side yard" of a Unit shall be deemed to be that portion of the Unit located between the lot boundary adjacent to the street and a line parallel with the rear of the dwelling located on such Unit, but exclusive of the dwelling itself and exclusive of any screened or fenced areas of such yard. The Association shall further maintain all utility pipes, lines, ducts, conduits or other apparatus serving the Unit (with the exception of interior appliances, which are the responsibility of the Resident). All costs associated with such maintenance, repair and replacement may be a Specific Assessment against those Units receiving the benefit of such maintenance. The Association's obligations pursuant to this subsection shall commence as to each Unit on the later of: (i) the date on which the Association is notified in writing that a certificate of occupancy has been issued for a dwelling on such Unit; or (ii) the date on which such Unit has been conveyed to a Person other than the Declarant.

4.2. Resident's Responsibility. Each Resident shall maintain his or her Unit, and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. In addition to any other enforcement rights, if a Resident fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Resident in accordance with Section 7.6(c). The Association shall afford the Resident reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

4.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the

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Association, nor any Resident shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

4.4. Party Walls and Similar Structures

(a) **General Rules of Law to Apply.** Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two (2) adjoining Units shall constitute a party structure. To the extent not inconsistent with the foregoing provisions of this Article or 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.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) **Damage and Destruction.** If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding the above, the Association shall be responsible for those exterior portions of Units set forth in Section 4.1(e).

(d) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

4.5. **Cost Sharing Agreements.** Adjacent to or in the vicinity of the Properties, there may be certain residential, nonresidential or recreational areas, including without limitation single family residential developments, retail, commercial, or business areas and Private Amenities, which are not subject to this Declaration and which are neither Units nor Common Area as defined in this Declaration (hereinafter "adjacent properties"). The owners of such adjacent properties shall not be Residents as defined in this Declaration, and shall not be subject to assessment under Article 7 of this Declaration.

The Association may enter into Cost Sharing Agreements with the owners or operators of portions of the adjacent properties:

(a) to obligate the owners or operators of such adjacent properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Properties;

(b) to permit use of any recreational and other facilities located on such adjacent properties by some or all of the Residents;

(c) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such adjacent properties, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Properties; and/or

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(d) to establish rules and regulations regarding the use of areas that benefit jointly the owners or operators of such adjacent properties and the owners within the Properties.

The owners or operators of such adjacent properties shall be subject to assessment by the Association only in accordance with the provisions of such Cost Sharing Agreement(s). The owners or operators of the adjacent properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

The Association may enter into similar agreements with the Resident of any Unit to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of any portion of such Unit that is used by or benefits the Association and/or one (1) or more other Residents within the Properties.

ARTICLE 5: INSURANCE AND CASUALTY LOSSES

5.1. Association 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, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and the Residents for damage or injury caused by the negligence of the Association or the Residents, or the Association's employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) 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) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

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(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all effected improvements and other insurance property or the maximum limit of coverage available, whichever is less.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment. In the event of an insured loss, the deductible shall be treated as a Common Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Residents, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Resident(s) and their Units pursuant to Section 7.6.

The Association shall have no insurance responsibility for any portion of the Private Amenities.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Winder, Georgia area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Resident upon request. 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 5.1(a).

(i) All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and the Residents;

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

(4) contain an inflation guard endorsement;

(5) include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(6) an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

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

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- (1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Residents and their tenants, servants, agents, and guests;
- (2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Residents, 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;
- (4) an endorsement excluding Residents' individual policies from consideration under any "other insurance" clause;
- (5) a cross liability provision; and
- (6) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. In the event of any insured loss, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means 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.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Board of Directors, and, during the Development Period, the Declarant, decide within sixty (60) Days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (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 determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed 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 and for the benefit of the Association 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.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without consent of the Residents, levy Special Assessments to cover the shortfall against those Residents responsible for the premiums for the applicable insurance coverage under Section 5.1(s).

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5.2. Owners' Insurance. By virtue of taking title to a Unit, 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 his or her Unit, less a reasonable deductible, which deductible shall not exceed, in any event, one thousand dollars (\$1,000.00), naming the Association as an additional insured, unless the Association carries such insurance (which they may, but are not obligated to do hereunder). Each Owner shall present a certificate evidencing said insurance at the closing of the purchase of the Unit and shall file a copy of his or her policy or policies of insurance with the Board of Directors within thirty (30) days after the purchase thereof. Such Owner shall also promptly notify, in writing the Board of Directors in the event such policy is canceled. 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 benefited Unit and the Owner thereof pursuant to Section 7.6.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, 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 8. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit 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.

ARTICLE 6: ANNEXATION AND WITHDRAWAL OF PROPERTY

6.1. Annexation by Declarant. In addition to the property described in Exhibit "A" and subjected hereto, Declarant may from time to time unilaterally subject Additional Property to the provisions of this Declaration. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer or owner of at least a portion of the real property being annexed, that the owner of such property has consented to its annexation, and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Residents, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

6.2. Annexation by the Board. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of the Board of Directors, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

6.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the owner of the property

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to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

6.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Residents and obligating such Residents to pay the costs incurred by the Association through Specific Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. 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.

6.5. Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

ARTICLE 7: ASSESSMENTS

7.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Units; (b) Special Assessments as described in Section 7.5; and (c) Specific Assessments as described in Section 7.6. Each Resident, by accepting a deed or entering into a contract of sale or lease for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit other than an Apartment Unit against which the assessment or charge is made until paid, as more particularly provided in Section 7.7. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Resident of such Unit, including Apartment Units, at the time the assessment arose. Upon a transfer of title to a Unit other than an Apartment Unit, the grantee shall be jointly and severally liable for any 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 assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Resident liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Residents with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Resident is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

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No Resident may exempt himself or herself from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Resident's use, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Resident. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

7.2. Declarant's Obligation for Assessments. During the Development Period, the Declarant may annually elect to pay either (a) an amount equal to the assessments on all of its unsold Units, notwithstanding the commencement date set forth in Section 7.8; or (b) the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing prior to the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligation hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Development Period, the Declarant shall pay assessments on any unsold Units in the same manner as any other Resident.

7.3. Computation of General Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare and adopt a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 7.4.

The assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreement.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials (in addition to any amounts paid by Declarant under Section 7.2), which may be treated as either a contribution or an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Resident at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective.

If the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. In

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such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Resident at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

7.4. **Reserve Budget.** The Board may, in its sole discretion, annually prepare reserve budgets which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general budget reserve amounts sufficient to meet the projected needs of the Association.

7.5. **Special Assessments.** In addition to other authorized assessments, the Association may levy, through action by the Board and without consent of the Residents, Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be allocated equally among all Units subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved, during the Development Period only, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment. 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.

7.6. **Specific Assessments.** The Association shall have the power to levy Specific Assessments, which may be designated as Monthly Service Fees, against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Resident pursuant to a menu of special services which the Board may from time to time authorize to be offered to Residents and occupants and which are not included within the General Assessment (which might include, without limitation, hot water heater maintenance and replacement, electrical and plumbing systems maintenance (excluding fixtures), HVAC maintenance, landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, internet, and other computer related services, security, caretaker, fire protection, utilities, and similar services and facilities), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Resident;

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one (1) or more Units; and

(c) to cover all costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Resident or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests.

In addition, fines levied by the Association pursuant to Section 3.3 shall constitute Specific Assessments.

7.7. **Lien for Assessments.** The Association shall have a lien against each Unit other than an Apartment Unit to secure payment of assessments and other charges, as well as interest at a rate to be 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 reasonable 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 previously recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

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The Declarant or 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; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Unit owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent 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 assessments due prior to such sale or transfer but arising after the date of such Mortgage. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Residents of all Units subject to assessment under Section 7.8, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

7.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the date which the Unit is conveyed or leased to a Person other than the Declarant. The first annual General Assessment levied on each Unit shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

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

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

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 4.1;
- (b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility; and
- (c) Any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of open space for public benefit and held by such agency or organization for such recreational and open space purposes.

7.11. Capitalization of Association. Upon acquisition of record title to a Unit by an Owner thereof other than the Declarant or upon occupancy of a Unit other than an Apartment Unit by a Person other than the Declarant, a Resident fee shall be paid by or on behalf of each purchaser or occupant to the working capital of the Association in an amount determined by the Board. Upon execution of an Apartment Residency

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Agreement or similar document by a Resident, an application fee shall be paid by such Resident in an amount determined by the Board. These amounts shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. These amounts shall be collected and disbursed to the Association at closing of the purchase and sale or lease of the Unit to the Resident, or if the obligation to make the capital contribution arises by virtue of occupancy of a Unit by a Person other than the Declarant, the capital contribution shall be paid immediately upon demand by the Association. Capital contributions shall be used by the Association in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

ARTICLE 8: ARCHITECTURAL STANDARDS

8.1. General. No exterior structure or improvement, as described in Section 8.4, shall be placed, erected, installed or made upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit except in compliance with this Article, and with the prior written approval of the appropriate reviewing body under Section 8.2, unless exempted from the application and approval requirements pursuant to Section 8.3.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association or to improvements to any Private Amenity. This Article may not be amended during the Development Period without the Declarant's written consent.

8.2. Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the reviewing bodies described below, the members of which need not be Residents or representatives of the Residents, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The

reviewing bodies 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.

(a) Architectural Review Board. The ARB shall have exclusive jurisdiction over all construction on any portion of the Properties. Until one hundred percent (100%) of the Properties have been developed and conveyed to owners other than the Declarant and initial construction on each Unit has been completed in accordance with the Design Guidelines, the Declarant retains the right to appoint all members of the ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee ("MC"), all of whom shall be appointed by and shall serve at the discretion of the Board. If established, the MC shall have jurisdiction over modifications, additions, or alterations of Units, including existing structures and landscaping, after completion of initial construction on the Unit. Upon expiration of the Declarant's right to appoint the members of the ARB, the MC may be eliminated and its duties assumed by the ARB.

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8.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from any Private Amenity or any lake, pond, river, stream or other body of water. The Design Guidelines are intended to provide guidance to Residents and Builders regarding matters of particular concern to the reviewing bodies in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the reviewing bodies and compliance with the Design Guidelines does not guarantee approval of any application.

The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design 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 Design Guidelines; the ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The ARB shall make the Design Guidelines available to Residents and Builders who seek to engage in development or construction within the Properties.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the ARB. Any architectural guidelines and standards adopted by the MC may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the appropriate reviewing body for review and approval (or disapproval). In addition, information concerning septic tank drainage fields and placement, irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the reviewing bodies may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions may be based solely on aesthetic considerations. Each Resident acknowledges that opinions on aesthetic matters are subjective and may vary over time.

In the event that the ARB or MC fails to approve or to disapprove any application within sixty (60) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to Section 8.7.

Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Resident may paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval.

8.4. Specific Guidelines and Restrictions

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of common mailboxes; basketball hoops; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; docks, piers, or boathouses; gazebos or playhouses; window air-conditioning units or fans; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the reviewing body shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Resident must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the appropriate reviewing body. The ARB may, but is not required to, adopt specific guidelines as part of the Design Guidelines or rules and regulations which address the following items.

(i) Signs. No sign of any kind shall be erected by a Resident or occupant without the prior written consent of the appropriate reviewing body, except (1) such signs as may be required by legal proceedings; and (2) not more than one (1) professional security sign of such size deemed reasonable by the ARB in its sole discretion. Unless in compliance with this Section, no signs shall be posted or erected by any Resident or occupant within any portion of the Properties, including the Common Area, any Unit, any structure or dwelling located on the Common Area or any Unit (if such sign would be visible from the exterior of such structure or dwelling as determined in the reviewing body's sole discretion) or from any Private Amenity.

The Declarant and the ARB reserve the right to prohibit signs and to restrict the size, content, color, lettering, design and placement of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) Tree Removal. No trees that are more than six (6) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the appropriate reviewing body; provided however, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a septic field, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the appropriate reviewing body. The appropriate reviewing body may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed.

(iii) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Unit; (2) one (1) approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Properties; (5) seasonal decorative lights during the usual and common season; or (6) front house illumination of model homes.

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(iv) Temporary or Detached Structures. Except as may be permitted by the ARB during initial construction, or the MC thereafter, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Unit. Except as provided in Section 9.8, no mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

(v) Accessory Structures. Unless otherwise approved by the ARB, no detached accessory structures may be placed on a Unit to be used for a playhouse, swimming pool, tennis court, tool shed, dog house, garage or other use. If approved, such accessory structures shall conform in exterior design and quality to the dwelling on the Unit. All approved accessory structures shall be located within side and rear setback lines as may be required by the ARB or by applicable zoning law.

(vi) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(vii) Minimum Dwelling Size. Each residential dwelling located on any Unit shown on the plats for Heartland shall have a minimum of one thousand one hundred (1,100) square feet of enclosed, heated and cooled living space. Upon written request of an Owner, the ARB may waive such square footage requirement if, in the ARB's sole discretion, the resulting appearance of such residential dwelling will preserve and conform to the overall appearance, scheme, design, value and quality within the Properties.

8.5. Construction Period. After commencement of construction, each Resident shall diligently continue construction to complete such construction in a timely manner. The initial construction of all structures must be completed within one (1) year after issuance of a building permit unless extended by the ARB in its sole discretion. All other construction shall be completed within the time limits established by the appropriate reviewing body at the time the project is approved by the reviewing body.

For the purposes of this Section, completion of a structure shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the Unit.

8.6. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

8.7. Variance. The ARB 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. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB 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.

8.8. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall 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 neither the Declarant, the Association, the Board, the ARB nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved

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construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board, the ARB or MC or any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 3.6.

8.9. **Enforcement.** The Declarant, any member of the ARB, the MC or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARB or MC, Residents shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should a Resident fail to remove and restore the property as required, any authorized agent of Declarant, the ARB, MC or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with

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this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant, the ARB and the MC by any means of enforcement described in Section 3.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment pursuant to Section 7.6.

Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Resident of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Resident thereof as a Specific Assessment pursuant to Section 7.6.

Neither the ARB, MC or any member of the foregoing nor the Association, the Declarant, or their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article.

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

ARTICLE 9: USE RESTRICTIONS

9.1. **General.** This Article sets out certain use restrictions which must be complied with by all Residents and occupants of any Unit. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices for Builders, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibit "A" or on any Additional Property, offices for any property manager retained by the Association, business offices for the Declarant or the Association or related parking facilities) consistent with this Declaration and any Supplemental Declaration. No solicitations, other than such actions as are allowed in this Declaration by the Declarant, shall be permitted on the Properties. All guests are limited to a two (2) week continuous stay in a twelve (12) month period.

9.2. **Age Restriction.** Occupants of Heartland must be fifty-five (55) years of age or older, except that an adult child who is physically or mentally impaired and otherwise meets occupancy requirements may reside with a qualifying resident who is the parent or guardian. This age restriction shall not apply to any Unit owned by the Declarant. The Association or, during the Development Period, the Declarant are specifically authorized to bring legal action to compel the removal of any persons violating this Section and shall be entitled to collect reasonable attorney's fees actually incurred from the Owner or Resident of any Unit where a violation of this Section exists. The right of enforcement set forth in this Section shall not be exclusive of any other enforcement rights to which the Association or the Declarant may be entitled to herein. Notwithstanding anything herein to the contrary, the Board or, during the Development Period, the Declarant shall establish age, income, and health criteria for admissions to Heartland. No use inconsistent with these criteria shall be permitted in Heartland.

Age

9.3. Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Residents, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Residents and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Residents and occupants until and unless overruled, canceled, or modified by the Board and, during the Development Period, the written consent of the Declarant.

9.4. Licensing or Related Requirements. Heartland may be licensed or otherwise designated as a continuing care retirement community without life care commitment. The Association shall take all necessary steps to enforce, and all Owners and Residents agree to abide by, all requirements imposed by the Association or any regulatory or governmental agency affecting Heartland in this regard.

9.5. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Residents and establishing sanctions against Residents shall also apply to all occupants even though occupants are not specifically mentioned.

9.6. Leasing. Units may be leased for residential purposes only, subject to prior approval of the lease by the Board. All leases shall require, without limitation, that the tenant acknowledge receipt of copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board. All occupants of Units must meet the age-restriction requirement set forth in this Article, and pay the requisite fees established by the Association pursuant to Section 7.11.

9.7. Residential Use. Units may be used only for residential purposes of a single family and for ancillary business or home office uses. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Unit without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

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9.8. Occupancy of Unfinished Units. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed.

9.9. Parking. Vehicles shall be parked only in the garages or in the driveways, if any, serving the Units or in appropriate spaces or areas designated by the Board. A portion of the Properties will be dedicated for the parking of certain types of vehicles as determined in the sole discretion of the Board. Vehicles shall be subject to such reasonable rules and regulations as the Board may adopt. The Declarant and/or the Association may designate certain parking areas for visitors or guests. Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the Governing Documents.

9.10. Private Streets. The Private Streets shall be subject to the provision of this Declaration regarding use of Common Area. Additionally, Residents of Units and other permitted users of the Private Streets pursuant to Section 2.2 shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the Private Streets by other authorized users of the Private Streets. Prohibited activities shall include without limitation obstruction of any of the Private Streets.

9.11. Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association, except as specifically provided herein.

With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, a Resident or Residents may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Resident or Residents who reserve a portion of the Common Area as provided herein shall assume, on behalf of himself/herself/themselves and his/hers/their guests, occupants and family, all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

9.12. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of dogs, cats, or other usual and common household pets, as determined by the Board. No more than one pet per Unit shall be allowed. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All pets shall be reasonably controlled by the owner whenever outside a Unit and shall be kept in such a manner as to not become a nuisance by barking or other acts. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Feces left upon the Properties by dogs must be removed by the owner of the dog or the person responsible for the dog. The owners of the pet shall be responsible for all of the pet's actions. Pets shall not be permitted in any lake or within any Private Amenity except in compliance with conditions established by the owner of such Private Amenity. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 3.3.

9.13. Nuisance. It shall be the responsibility of each Resident and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any

substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any Unit unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically.

The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Resident or occupant.

9.14. Storage of Materials, Garbage Dumping, Etc. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris, rubbish, trash or garbage, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff.

Each Resident shall maintain its Unit in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash and debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Unit shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Resident shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Units and shall not be buried or covered on the Unit. Any Unit on which construction is in progress may be policed prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Residents shall remove trash and debris from the Unit upon reasonable notice by Declarant in preparation for special events.

9.15. Combustible Liquid. There shall be no storage of gasoline, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

9.16. Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any such discharge.

9.17. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed after a subdivision plat including such Unit has been approved and filed in the Public Records without the Declarant's

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prior written consent during the Development Period, and the prior written consent of the ARB thereafter. In addition, no home shall be subdivided or partitioned to create housing for more than a single family. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

9.18. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped and improved so as to permit safe sight across such areas. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

9.19. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Resident or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Use of any areas designated as "drainage easement areas" on any recorded subdivision plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the Declarant to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 8.

(c) No Person shall alter the grading of any Unit without prior approval pursuant to Article 8 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Resident's consent.

(d) All Persons shall comply with any and all applicable city and county erosion control ordinances in construction of improvements on any Unit and in conducting any activity within non-disturbance buffer zones.

9.20. Irrigation. Residents shall not install irrigation systems which draw upon ground or surface waters nor from any lakes or ponds within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

9.21. Streams. No streams which run across any Unit may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 10.

9.22. Lakes and Other Water Bodies. All lakes, ponds, and streams within the Properties, if any, shall be used only in accordance with such rules and regulations as may be adopted and published by the Board. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Properties.

9.23. Wetlands. All areas designated on a recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or

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covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Unit, the Resident shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. If approved, the Association may maintain boardwalks, fishing docks, and crab docks over, around, and in such wetlands. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

ARTICLE 10: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Residents, and the owners of any Private Amenities, and their successors-in-title.

10.1. Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units, between each Unit and any adjacent Common Area, between Common Area and any adjacent Private Amenity, and between each Unit and any adjacent Private Amenity 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 (3) 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.

10.2. Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant specifically grants to the local water supplier, sewer service provider, electric company, telephone company, and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A" or on the Additional Property.

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

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

10.3. Easement for Slope Control, Drainage and Waterway Maintenance. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements for itself, the owner of any Private Amenity and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Unit for the purposes of:

- (a) controlling soil erosion, including grading and planting with vegetation any areas of any Unit which are or may be subject to soil erosion;
- (b) drainage of natural or man-made water flow and water sweat from any portion of the Properties or any Private Amenity;
- (c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Unit or Common Area;
- (d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and
- (e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties or any Private Amenity.

10.4. Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation the owners of Private Amenities, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, 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, for the posting of signs, and for connecting and installing utilities serving the Additional 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 vehicular traffic connected with development of the Additional Property.

10.5. Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter upon any Unit for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to the Resident. This easement includes the right to enter any Unit to cure any condition which may increase the possibility of fire,

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and any improvement which contributes to the lateral support of another portion of the Common Area, of another Unit, or of a Private Amenity shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

10.9. **Easements for Private Amenities.** Declarant reserves, creates, establishes, promulgates and declares for the owners of any Private Amenity the following non-exclusive, perpetual, reciprocal, appurtenant easements which shall benefit the Private Amenity.

(a) There is hereby established for the benefit of the owner of any of the Private Amenities and their members (regardless of whether such members are Residents hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Private Amenities and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities.

(b) Any portion of the Properties immediately adjacent to the Private Amenities are hereby burdened with a non-exclusive easement in favor of the adjacent Private Amenities for overspray of water from the irrigation system serving the Private Amenities. Under no circumstances shall the Association or the owner(s) of the Private Amenities be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) The Declarant hereby reserves for itself, its successors and assigns, and may assign to the owner(s) of the Private Amenities, an easement and all rights to draw water from the lakes and ponds within or adjacent to the Properties for purposes of irrigation of the Private Amenities and for access to and the right to enter upon the lakes and ponds within or adjacent to the Properties, if any, for installation and maintenance of any irrigation systems.

10.10. **Easement for Special Events.** Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive reciprocal, appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Resident, by accepting a deed, lease or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Resident agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

10.11. **Rights to Stormwater Runoff, Effluent and Water Reclamation.** Declarant hereby reserves for itself and its designees, including but not limited to the owner of any Private Amenity, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Resident agrees, by acceptance of a deed to a Unit, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

10.12. **Liability for Use of Easements.** No Resident shall have a claim or cause of action against the Declarant, its successors or assigns, including without limitation the owner(s) of any Private Amenities, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

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ARTICLE 12: DECLARANT'S RIGHTS

12.1. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

12.2. Development and Sales. The Declarant and Builders authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, such as sales activities, tournaments, charitable events, and promotional events, and restrict Residents from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Residents' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Residents from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant and authorized Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and Builders authorized by Declarant may establish within the Properties, including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. During the Development Period, Residents may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Residents without the payment of any use fees.

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

12.4. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 6.4, may conflict with the Declaration, By-Laws or Articles.

12.5. Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines shall be effective without prior notice to and the written consent of the Declarant, during the Development Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

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ARTICLE 13: PRIVATE AMENITIES

13.1. General. Private Amenities shall not be a portion of the Common Area, and neither ownership nor occupancy of a Unit shall confer any ownership interest in or right to use any 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 from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities 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, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users; and to require the payment of a purchase price, membership contribution, initiation fee, membership deposit, dues, use charges and other charges for use privileges; and to change, eliminate or cease operation of any or all of the facilities; and to reserve use rights; and to terminate use rights altogether, subject to the terms of any written agreements.

13.2. Conveyance of Private Amenities. All Persons, including all Residents, are hereby advised that no representations or warranties have been or are made by the Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owners of the Private Amenities. Further, the ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members becomes the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one (1) or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association or any Resident shall be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

13.3. View Impairment. Neither the Declarant, the Association, nor the owners of any Private Amenities, guarantees or represents that any view over and across any Private Amenity from Units will be preserved without impairment. The owner of any Private Amenity shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping or to install improvements or barriers (both natural and artificial) to the Private Amenities from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Resident, by acceptance of a deed, acknowledges that any view of a Private Amenity which the Unit may enjoy as of the date of the purchase of the Unit may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Private Amenity.

13.4. Cost Sharing Agreements. The Association may enter into a contractual arrangement or Cost Sharing Agreement with any Private Amenity obligating the Private Amenity or the Association to contribute funds for, among other things, shared property or services and/or a higher level of Common Area maintenance.

13.5. Architectural Control. Neither the Association, nor any committee thereof, shall approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private

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Amenity at least fifteen (15) Days' prior written notice of its intent to approve or permit the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have fifteen (15) Days to approve or disapprove the proposal in writing delivered to the appropriate committee or Association, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the fifteen (15) Day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area.

13.6. Use Restrictions. Upon request of the owner of any Private Amenity, the Association shall enforce its use restrictions and rules against any Resident or occupant violating such regulations within such Private Amenity, including but not limited to the exercise of the Association's self-help rights for violation of sign and pet restrictions.

13.7. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefitting any Private Amenity, may be made without the written approval of the owner(s) of the affected Private Amenity. The foregoing shall not apply, however, to amendments made by the Declarant.

13.8. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Properties and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate rules or regulations affecting activities on or use of the Private Amenities without the prior written consent of the owners of the Private Amenities affected thereby.

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ARTICLE 14: ADMISSIONS

14.1. Admissions Requirements. All prospective occupants must be approved in advance for residency at Heartland by the Association and, during the Development Period, by the Declarant (hereinafter independently, and when applicable, collectively referred to as the Admissions Committee or "AC").

14.2. Admissions Criteria. The AC shall make an independent judgment whether each prospective Resident qualifies for residency at Heartland. In so doing, the AC shall require each applicant to furnish the following:

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- (a) evidence that he or she meets the minimum age requirements for residency at Heartland;
 - (b) information evidencing his or her capacity to live independently;
 - (c) evidence that he or she is ambulatory;
 - (d) information necessary to obtain group long-term-care insurance coverage;
 - (e) financial information evidencing his or her ability to pay all Monthly Service Fees, the Resident fee, regular and special assessments, and any other expenses after assuming occupancy of his or her Unit; and
 - (f) such additional financial, medical, and personal information as the AC deems necessary, as determined in its sole discretion. Each prospective Resident, as well as other occupants residing in the Unit, may also be required to undergo such additional examinations and tests as the AC deems necessary, in its sole discretion, in accordance with applicable laws. If the prospective Owner is a trust, the trust beneficiary who intends to reside at Heartland must satisfy the criteria described in this Section.

14.3. Powers of and Restrictions on the Admissions Committee. In addition, the AC shall:

- (a) impose such conditions and restrictions on occupancy and ownership of a Unit at Heartland as the AC deems reasonably necessary or appropriate to ensure the efficient operation and peaceful enjoyment of Heartland;
- (b) not discriminate in any manner based upon race, color, sex, religion, ancestry, or national origin;
- (c) require that Residents and occupants be capable of independent living, ambulatory, free of communicable disease, and eligible for coverage by a group long-term-care insurance policy to be selected and obtained by the Board of Directors; and
- (d) establish other admissions procedures and eligibility criteria for applicants for admission to Heartland, including health, financial, age, and other criteria.

14.4. Finality of Decisions. Admissions decisions made by the AC are final and may not be appealed.

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ARTICLE 15: GENERAL PROVISIONS**15.1. Duration.**

(a) Except as otherwise limited by Georgia law, this Declaration shall have perpetual duration. If Georgia law limits the period during which covenants may run with the land, then this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Georgia law, this Declaration may be terminated within the first twenty (20) years after the date of recording by unanimous written consent of the Board of Directors, which instrument is recorded in the Public Records; provided, however, regardless of the provisions of Georgia law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners of at least fifty-one percent (51%) of the Units, including the Apartment Units, and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies with the requirements of O.C.G.A. §44-5-60(d) and is recorded in the Public Records. 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.

15.2. Amendment.

(a) **By Declarant.** Until termination of the Development Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Resident of such Unit shall consent in writing.

(b) By the Board.

(i) The Board shall be authorized to amend this Declaration without the consent of the Residents (i) for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220, *et seq.* (1994) and conforming this Declaration to any mandatory provisions thereof, and (ii) to correct scrivener's errors and other mistakes of fact, provided that amendments under this provision have no material adverse effect on the rights of the Residents. During the Development Period, any such amendments shall require the written consent of the Declarant.

(ii) Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended by the Board, without consent of the Residents, and, during the Development Period, the written consent of the Declarant.

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(c) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

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

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

15.4. Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Resident covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

15.5. Non-Merge. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Residents shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

15.6. Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted in this Declaration.

15.7. Use of the Word "Heartland". No Person shall use the word "Heartland" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Residents may use the word "Heartland" in printed or promotional matter where such terms are used solely to specify that particular property is located within Heartland and the Association and any other community association located on Heartland shall be entitled to use the word "Heartland" in its name.

15.8. Compliance. Every Resident and occupant of any Unit shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by any aggrieved

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Resident(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 3.3.

15.9. Right of First Refusal.

(a) Each Owner acknowledges, and the deed of conveyance to each Owner may provide, that the Association shall retain a right of first refusal and option to purchase any Unit within the Properties on the terms and conditions set forth below. This Section shall not restrict a Owner's right to enter into a binding contract for the sale of a Unit, provided that, for so long as this right of first refusal exists, the contract provides that the Owner may not convey a Unit to any third party without giving the Association the right of first refusal on the terms and conditions set forth below, and, further provided that the conveyance of any Unit is subject to the admission of the prospective Owner and occupants residing therein as set forth in Article 14. This right of first refusal shall not apply to any transfer or conveyance in connection with a Mortgage foreclosure or deed in lieu of foreclosure.

(b) If any Owner desires to convey any Unit to a third party, the Owner proposing to transfer said Unit shall deliver to the Board within seven (7) Days of its execution a copy of the executed, binding real estate sales contract between the Owner and the prospective purchaser. The real estate sales contract shall provide that the Association shall have thirty (30) Days after actual receipt of the executed binding real estate contract upon which to exercise its right of first refusal and option to purchase the Unit on the same terms and conditions as the real estate sales contract between the Owner and prospective purchaser. The Association shall provide written notice of the exercise of the right of first refusal to the transferor. If the Association fails to exercise such right as provided herein, the right of first refusal shall be waived and extinguished. Upon request and receipt of a release in form and content satisfactory to the Association, the Association shall execute a release of such right of first refusal in recordable form if the Association does not intend to exercise such right.

(c) If the Association exercises its right to purchase, the Owner of the Unit shall convey the Unit by general warranty deed (subject to such exceptions and easements of record as are standard and customary) to the Association within thirty (30) Days after the date of receipt of the Association's notice that the right of first refusal has been exercised. The remaining terms of the real estate sales contract shall remain in full force and effect.

(d) If the Association does not exercise its right to purchase, the Owner of the Unit shall give the Board written notice of the name and address of the purchaser or transferee, the date of each transfer of title, and such other information as the Board may reasonably require not later than the date of closing. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. Notwithstanding anything herein to the contrary, all prospective Owners, Residents and occupants must be approved in advance of taking title to a Unit, as set forth in Article 14. The sale of any Unit whose Residents or occupants are not so approved shall be voidable by the Association and, during the Development Period, by the Declarant.

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15.10. Exhibits. Exhibit "A" attached to this Declaration is incorporated by this reference and amendment of such exhibit shall be governed by the provisions of Section 15.2.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 7th day of November, 2001.

HEARTLAND, INC., a Georgia nonprofit corporation.

By:  [SEAL]

Its: Richard Woodward, Executive Director

Its:



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EXHIBIT "A"

All that tract or parcel of land lying and being in the 243rd District G.M., State of Georgia, County of Barrow, being all of Phase 1-A, Heartland Retirement Community, as per plat prepared by solar Land Surveying Company, dated 5/16/01, and recorded in Plat Book 51, pages 284-285, Barrow County, Georgia records, which plat is hereby referred to and made a part of this description.

INCLUDED IN THIS CONVEYANCE are all rights in and to that certain 125-foot Ingress-Egress Easement as depicted on the above referenced survey.