

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
SKYLAKE**

WHEREAS, Carter Properties, a Georgia corporation, recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Skylake, on November 1, 1973, in Deed Book 3Z, Page 462, et seq., White County, Georgia Records (hereinafter referred to as the "Original Declaration"); and

WHEREAS, the Original Declaration and Bylaws have, as amended have been amended and restated in their entirety by the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Skylake and Bylaws of the Skylake Property Owners' Association, Inc., recorded on December 8, 1988, in Deed Book 179, Page 133 et seq., White County, Georgia records (hereinafter referred to as the "Declaration"); and

WHEREAS, the Declaration has been previously amended by amendments recorded in the White County, Georgia records as follows:

<b>Recording Date</b>	<b>Deed Book/Page</b>
October 29, 1990	278/31 et seq.;
October 31, 1990	278/161 et seq.;
September 15, 1993	379/287 et seq.;
July 7, 1995	432/450 et seq.;
September 13, 1995	438/291 et seq.;
November 4, 1997	514/042 et seq.;
February 8, 1999	572/546 et seq.;
December 2, 1999	614/350 et seq.;
December 2, 1999	614/352 et seq.;
December 2, 1999	614/347 et seq.; and

WHEREAS, plats relating to Skylake are filed in the White County, Georgia records as follows:

<b>Plat Book</b>	<b>Page</b>
7	81-84
7	146
8	79-87
10	112-114
11	102-108
13	47-50
14	97
19	284
23	209
33	203
34	4
45	192

WHEREAS, Article XII, Section 4 of the Declaration provides for amendment of the Original Declaration by the affirmative vote, written consent or any combination thereof, of members holding at least two-thirds of the total eligible Association vote;

WHEREAS, members holding at least two-thirds of the eligible Association vote desire to amend the Declaration and have approved this amendment;

WHEREAS, these Amendments do not alter, modify, change or rescind any right, title, interest, or privilege held by any first Mortgage Holder; provided, however, in the event a court of competent jurisdiction determines

that these Amendments do alter, modify, change, or rescind any right, title, interest, or privilege held by any first Mortgage Holder without such first Mortgage Holder's consent in writing to these Amendments, then these Amendments shall not be binding on the first Mortgage Holder so involved, unless such first Mortgage Holder consents to these Amendments; and if such consent is not forthcoming, then the provisions of the Original Declaration and Original Bylaws effective prior to these Amendments shall control with respect to the affected first Mortgage Holder; and

WHEREAS, the real property described in Exhibit "A" of the Amended and Restated Declaration set forth below, including the improvements constructed or to be constructed thereon, and any additional property which is hereafter subjected to this Declaration, shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property now or hereafter made subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of such real property, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof;

**Now, therefore, the Declaration and all exhibits thereto are Hereby stricken in their entirety and the following is simultaneously substituted therefor:**

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- |             |   |                                   |
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| Exhibit "B" | - | Bylaws                            |

**1. NAME.**

The name of the property is Skylake, which is a residential property owners' development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

**2. DEFINITIONS.**

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code.

Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as follows:

*Act* means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

*Architectural Building Committee* or *ABC* means the committee established by the Board of Directors to exercise the architectural review powers set forth in Paragraph 10 hereof.

*Area of Common Responsibility* means the Common Property, together with any areas which become the Association's responsibility under this Declaration or by contract or agreement with any other Person. Any public rights-of-way within or adjacent to the Property may be considered by the Board to be part of the Area of Common Responsibility.

*Articles* or *Articles of Incorporation* means the Articles of Incorporation of Skylake Property Owners' Association, Inc., filed with the Secretary of State of the State of Georgia.

*Association* means Skylake Property Owners' Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

*Association Legal Instruments* means this Declaration and all exhibits hereto, including the Association's Bylaws, Articles of Incorporation, and the plats, all as may be supplemented or amended.

*Board* or *Board of Directors* means the elected body responsible for management and operation of the Association.

*Bylaws* means the Bylaws of Skylake Property Owners' Association, Inc.

*Common Property* means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

*Common Expenses* means the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

*Community-Wide Standard* means the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board and the ABC.

*Effective Date* means the date that this Declaration is recorded in the White County, Georgia land records.

*Eligible Mortgage Holder* means a holder of a first mortgage secured by a Lot who has requested notice of certain items under Paragraph 15(c) hereof.

*Lot* means a portion of the Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property, or amendments or supplements thereto, recorded in the White County, Georgia land records. A Lot shall be deemed an "Improved Lot" upon satisfaction of all of the following: (1) Owner has made application to the Architectural Building Committee to build; (2) the Architectural Building Committee has approved the application to build; (3) the Owner has paid the construction fee; and (4) the Association has put water service in place. Any Lot that is not an Improved Lot shall be an "Unimproved Lot." Designation of a Lot as an Improved Lot or an Unimproved Lot is made on January 1 of each year. If all criteria for an Improved Lot are not met by January 1, that Lot shall be an Unimproved Lot for that year.

*Majority* means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

*Mortgage* means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

*Mortgagee* or *Mortgage Holder* means the holder of any Mortgage.

*Occupant* means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

*Officer* means an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.

*Owner* means the record title holder of a Lot, but shall not include a Mortgage Holder.

*Person* means any individual, corporation, firm, association, partnership, trust, or other legal entity.

*Property* means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference. The Property is a residential property owners' development which is subject to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

### **3. LOCATION, PROPERTY DESCRIPTION, AND PLATS.**

The Property subject to this Declaration and the Act is located in Land Lots 14, 28 and 29, of the 6th District of White County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. Plats of survey relating to the Property have been filed in Plat Book 7, Pages 81-84, Plat Book 7, Page 146; Plat Book 8, Page 79-87; Plat Book 10, Pages 112-114; Plat Book 11, Pages 102-108; Plat Book 13, Pages 47-50; Plat Book 14, Page 97; Plat Book 19, Page 284; Plat Book 23, Page 209; Plat Book 33, Page 203; and Plat Book 34, Page 4, of the White County, Georgia, records. The plats of survey are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

### **4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.**

*Membership.* Every Owner shall be deemed to have a membership in the Association. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast or one (1) office held for each Lot owned.

*Voting.* Members shall be entitled to one (1) equal vote for each Lot owned and an additional vote if such Lot is an Improved Lot. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

### **5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.**

Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all Improved Lots equally and all Unimproved Lots equally as more particularly provided in Paragraph 7(b) of this Declaration.

Notwithstanding the above, the Board of Directors shall have the power to levy specific special assessments pursuant to this Paragraph and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility hereunder, any Common Expenses benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specially assessed equitably among all of the Lots which are benefitted according to the benefit received.

Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot(s), including attorney's fees incurred by the Association in enforcing the Declaration, Bylaws or Association rules.

For purposes of this subparagraph 5(b), nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

### **6. ASSOCIATION RIGHTS AND RESTRICTIONS.**

The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have:

to make and to enforce reasonable rules and regulations (including imposition of fees) governing the use of the Property, including the Lots and the Common Property;

to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, suspending use and voting privileges, and suspending services paid for as a Common Expense, as provided herein and in Section 44-3-223 of the Act. These powers, however, shall not limit any other legal means of enforcing such documents or provisions by either the Association

or, in an appropriate case, by an aggrieved Owner;

to grant permits, licenses, utility easements, and other easements, permits or licenses necessary for the proper maintenance or operation of the Property under, through or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Property;

to control, manage, operate, maintain, replace and, in the Board's discretion, alter or improve all portions of the Property for which the Association is assigned maintenance responsibility under this Declaration;

to deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

to represent the Owners in dealing with governmental entities on matters related to the Common Property;

to permanently or temporarily close access to any portion of the Common Property with, except in emergency situations, thirty (30) days prior notice to all Owners. However, except for seasonal closing of the pool, the Owners may re-open the closed Common Property by a majority of the total eligible Association vote;

to prohibit access to the Property by contractors or subcontractors who have violated provisions of this Declaration, the Guidelines for Homebuilding at Skylake, or rules and regulations;

to acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

## 7. ASSESSMENTS.

*Purpose of Assessment.* The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized by the Board.

*Creation of the Lien and Personal Obligation For Assessments.* Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, to be established and collected as hereinafter provided; and (iii) specific special assessments levied by the Board hereunder against any particular Lot, including, but not limited to, reasonable fines imposed hereunder, water fees, lease fees, annexation fees, user fees and construction fees as set forth in the Association's rules and regulations and Guidelines for Home Building, and assessments levied under subparagraph 5(b) hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the White County, Georgia, records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority as provided in the Act.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The annual assessment shall be allocated on the basis of equivalent units which shall be assigned as follows:

<i>Type of Property</i>	<i>Equivalent Units</i>
Unimproved Lot	1.0
Improved Lot	1.5

In addition to the annual assessment, Owners of Improved Lots shall be subject to a water assessment which shall be allocated on an equal basis among all Improved Lots.

(c) *Delinquent Assessments.* All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(i) If the annual assessment or any part thereof is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board, a late charge equal to the greater of ten dollars (\$10.00) or ten percent (10%) of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten percent (10%) per annum or such higher rate as permitted by the Act shall accrue from the due date.

(ii) If partial payment of assessments and related charges is made, the amount received may be applied by the Board, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.

(iii) If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Common Property (provided, however, the Board may not deny ingress or egress to or from the Lot) and to vote.

(iv) If any assessment, fine or other charge is delinquent for sixty (60) days or more, in addition to all other rights provided herein and in the Act, the Association shall have the right upon ten (10) days written notice, and in compliance with any requirements set forth in the Act, to suspend any utility services paid for as a Common Expense, including, but not limited to, water, to that Lot until such time as the delinquent assessments and all costs incurred by the Association pursuant to this Paragraph, including reasonable attorney's fees, are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility or other service, including reasonable attorney's fees, shall be an assessment against the Lot.

(d) *Computation of Operating Budget and Assessment.* Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Property during the coming year, and the Board shall establish the annual assessment for the coming year. The Board shall cause the budget and notice of the assessment(s) to be delivered to each member at least twenty (21) days prior to the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a duly called Association annual meeting by a vote of a majority of the total eligible Association vote; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. However, the Board may propose a new or adjusted budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the Bylaws for special meetings, the new or adjusted budget and assessment shall take effect without a meeting of the members.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of Common Expenses on which the Board may base the annual assessments.

(e) *Special Assessments.* In addition to the annual assessment provided for in subparagraph (b) above and assessments authorized under Paragraphs 5(b) and 9(a)(ii) hereof, the Board may at any time levy a special assessment against all Owners, with notice thereof sent to all Owners. However, any special assessment must be approved by Owners holding at least two-thirds (2/3) of the eligible vote present and voting in person or by proxy at a duly called special or annual meeting of the members, notice of which shall specify that purpose. In the alternative, the vote on a special assessment may be taken outside a meeting by ballot or written consent as provided for in Article II, Section 8 of the Bylaws.

(f) *Capital Budget and Contribution.* The Board may prepare an annual or multi-year capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in subparagraph (d) above.

(g) *Statement of Account.* Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten dollars (\$10.00) or such higher amount as may be authorized under the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein. The Association may require an additional fee not to exceed twenty-five dollars (\$25.00) if the Association provides a copy of the Declaration and Bylaws to any

such Person in connection with a closing or otherwise upon request.

(h) *Surplus Funds and Common Profits.* Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall be added to the Association's reserve account.

## **8. INSURANCE.**

(a) *Hazard Insurance on Common Property.* The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) *Association Liability and Directors' and Officers' Liability Insurance.* The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million dollars (\$1,000,000.00).

(c) *Premiums and Deductible on Association Policies.* Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. 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 insurance at least equals the full replacement cost.

(d) *Policy Terms.* All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the respective benefitted parties, as further identified in subpara-graph (ii) below. Such insurance shall be governed by the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in Georgia. (ii) All policies on the Common Property shall be for the benefit of the Association and its members.

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

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

(v) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed periodically by one or more qualified persons appointed by the Board.

(vi) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Board, the Association's manager, the Owners and their respective tenants, servants, agents, and guests;

(2) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(3) a provision that no policy may be cancelled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;

(4) a provision that no policy may be cancelled, invalidated, suspended, or subjected to nonrenewal on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(6) that no policy may be cancelled or substantially modified or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

(e) *Additional Association Insurance.* In addition to the other insurance required by this Paragraph, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds or dishonesty insurance. The amount of fidelity coverage or dishonesty

insurance shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms: (a) the Association maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; or (b) two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, and flood insurance, if and to the extent necessary to satisfy the requirements of The Mortgage Corporation or the Federal National Mortgage Association.

(f) *Individual Lot Owner Insurance.* Each Owner shall carry blanket all-risk casualty insurance, if reasonably available, or if not reasonably available, fire and extended coverage, on his or her Lot and structures constructed thereon meeting the same requirements as set forth in subpara-graph (a) of this Paragraph for insurance on the Common Property. Each Owner further covenants and agrees that, in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Paragraph 10 of this Declaration, unless a determination not to rebuild is made in accordance with Paragraph 9 hereof. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds.

(g) *Insurance Deductibles.* In the event of an insured loss under the Association's casualty policy, any required deductible shall be considered a maintenance expense to be paid by Association or the Person or Persons who would be responsible for such loss in the absence of insurance in the same proportion for which they otherwise would be responsible bears to the total damage incurred. If any Owner fails to pay the deductible when required hereunder, then the Association can pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraphs 5(b) and 7 hereof.

## **9. REPAIR AND RECONSTRUCTION.**

(a) *Damage or Reconstruction of Common Property.* In the event of damage to or destruction of all or any part of the Property insured by the Association as a result of fire or other casualty, unless Lot Owners holding at least seventy-five percent (75%) of the total eligible Association vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. If the damage includes damage to a Lot, the written consent of the Owner(s) of the affected Lot(s) shall also be required. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Lot Owner with respect to the distribution of proceeds to any such Lot.

(i) *Cost Estimates.* Immediately after a fire or other casualty causing damage to the Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(ii) *Source and Allocation of Proceeds.* If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Paragraph 7(e) above. If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(iii) *Plans and Specifications.* Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Common Property was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board.

(iv) *Construction Fund.* The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph, to be disbursed by the Association in appropriate progress

payments to such contractor(s), supplier(s), or personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

(b) *Damage to or Destruction of Dwellings on Lots.* In the event of damage to or destruction of structures on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Paragraph 10 of this Declaration, unless a determination not to rebuild is made by the Lot Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

#### **10. ARCHITECTURAL CONTROLS.**

(a) *Architectural Standards.* Except as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining written approval of the Architectural Building Committee ("ABC"):

- (i) construct any dwelling or other improvement on a Lot,
- (ii) make any exterior change, alteration or construction on a Lot (including painting/staining, repainting/restaining, regrading or significant landscaping modifications), or any alteration of the Lot which affects the exterior appearance of the Lot.

The standard for approval of such improvements shall include, but not be limited to: (1) aesthetic considerations, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, and the Guidelines for Homebuilding at Skylake as may be adopted by the Board or the ABC, (4) harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography, and (5) any other matter deemed to be relevant or appropriate by the Board or the ABC.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ABC may reasonably require. Subject to subparagraph (c) below, the ABC shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and the Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans or the Community-Wide Standard. The Board or the ABC may publish written architectural standards for exterior alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Lots and the location in relation to surrounding structures and topography of the vicinity.

The Board, subject to this subparagraph (a), may allow encroachments on the Common Property as it deems acceptable.

If the ABC fails to approve or to disapprove such application within sixty (60) days after the application and such information as the ABC may reasonably require shall have been submitted, its approval will not be required and this subparagraph will be deemed complied with, unless such structure or improvement otherwise is in violation of the Declaration, the Bylaws, the Guideline for Homebuilding at Skylake, the Association's rules and regulations, or applicable zoning ordinances or building codes.

(b) *Architectural Building Committee.* The Architectural Building Committee shall constitute a standing committee of the Association. At all times, at least one member of the ABC shall be a Board member. The ABC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ABC, and the ABC may require payment of all such costs prior to approval of plans and specifications. The ABC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the Guidelines for Homebuilding at Skylake.

(c) *Appeal.* In the event that the ABC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ABC's decision to the Board of Directors. The Board shall rule on the appeal within sixty (60) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ABC, the decision of the ABC, and the application of the Owner to the ABC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within fourteen

(14) days from the date of the ABC's notice to the Owner of its decision, the decision of the ABC shall become final and all rights of appeal shall terminate and thereafter be void.

(d) *Limitation of Liability.* Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ABC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ABC, nor any member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction or modifications to any Lot, nor may any action be brought against the Association, the Board, the ABC, or any member thereof, for any such injury, damage or loss.

(e) *No Waiver of Future Approvals.* Each Owner acknowledges that the members of the Board and the ABC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ABC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ABC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(f) *Enforcement.* Any construction, alteration or other work done in violation of this Paragraph, the Declaration, the Bylaws, the Guidelines for Homebuilding at Skylake or any applicable zoning regulations shall be deemed to be nonconforming. Upon written request from the Board, a violating Owner shall, at his or her own cost and expense, remove such nonconforming construction, alteration or other work and restore the property to substantially the same condition as existed prior to such construction, alteration or work. Should the Owner fail to do so, the Board or its designees shall have the right, in addition to all other available remedies, to enter the property, remove the violation and restore the property, or obtain a court order compelling the violating Owner to do so. All costs thereof, including reasonable attorney's fees actually incurred, may be assessed against such Lot.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph 10 and its decisions or those of the ABC. All costs of any such action, including reasonable attorney's fees actually incurred, may be assessed against such Lot. Furthermore, the Board shall have the authority to record in the White County land records notices of violation of the provisions of this Paragraph.

If any Owner or Occupant makes any change, alteration, or construction upon the Common Property in violation of this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remain on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction. In the alternative, the Board may, upon written request, require that the Owner or Occupant making any alteration, change or construction upon the Common Property remove it and restore the Common Property substantially to the same condition that existed before such alteration, change or construction.

(g) *Commencement and Completion of Construction.* All improvements approved by the ABC hereunder must be commenced within one (1) year from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ABC, unless the ABC gives a written extension for commencing the work. Additionally, except with written ABC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ABC hereunder, except new construction, shall be completed within one hundred eighty (180) days of commencement. For new construction, the exterior of all houses and other structures and site work and basic landscaping shall be completed within one (1) year from the date of approval, except where said time frame would result in great hardship to the Owner or builder due to delays caused by intervening forces beyond the control of the Owner as defined herein. A certificate of completion must be issued by the ABC, as provided in the Guidelines for Homebuilding at Skylake, before a new home may be occupied.

## **11. USE RESTRICTIONS.**

Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, invitees, tenants and Occupants comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, invitees, tenants or Occupants, the Association may take action under this Declaration

against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, invitees, tenants or Occupants.

Use restrictions regarding use of Lots and the Common Property are as follows and also as may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws.

(a) *Use of Lots.*

(i) *Residential Use.* Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Property, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within that dwelling so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling; (b) the business activity does not involve door-to-door solicitation of residents; (c) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees; provided, however, this provision shall not preclude delivery of materials or items by United States Postal delivery or by other customary parcel delivery services (U.P.S., Federal Express, etc.); (d) the business activity does not involve storage of business equipment or machinery in vehicles on the Property or advertising on the Property in any form (except as may be permitted during construction on a Lot); (e) the business activity conforms to all zoning requirements for the Property; (f) the business activity does not increase traffic in the Property; (g) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (h) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the Board's sole discretion.

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: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

(ii) *Occupants.* If an Owner of a Lot is a corporation, partnership, trust or other legal entity, not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the dwelling on the Lot. The designated person(s) to occupy the dwelling may not be changed more frequently than once every six (6) months.

(b) *Outbuildings and Temporary Structures.* No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected or used by any Owner or Occupant on any portion of the Property, at any time, either temporarily or permanently, except with written Board approval; provided, however, trailers, temporary buildings, and the like may be used for construction purposes only during construction of dwellings. No garage, outbuilding, or other appurtenant structure shall be used for residential purposes.

(c) *Use of Common Property.* There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written Board consent, except as specifically provided herein. There shall be no use of the Common Property which may unreasonably disturb the peaceful enjoyment of the Common Property by other Owners and Occupants. Unacceptable conduct shall include, but not be limited to: threatening or intimidating conduct toward any resident or guest; raucous behavior or insobriety; and excessively loud talking or playing of music. Use of the Common Property shall comply with all rules and regulations adopted by the Board of Directors.

With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Property hereunder shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Property 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.

(d) *Improvements on Lots.*

(i) No building shall be erected, placed, altered, or permitted to remain on any Lot until the building

plans, elevations, specifications of materials, specifications of exterior finishes, and specifications of construction methods, with plot plans showing the location of such buildings, have been approved in writing by the ABC, as to conformity and harmony of external finishes, color, design and general quality with the existing standards of the neighborhood, and as to the location of the building with respect to topography and finished ground elevations as provided in Paragraph 10 of this Declaration. Space for parking at least two vehicles off the street must be provided prior to occupancy of any Lot. No structure, except as herein provided, shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) detached single-family dwelling not exceeding two (2) stories in height, excluding any basement.

(ii) Except with the express written permission of the Board or its designee, no house or portion thereof, garage, carport, playhouse, outbuilding, or other structure shall be erected closer than twenty (20) feet from the side line of any Lot, forty (40) feet from the rear line of any Lot, and forty (40) feet from the front line of any Lot. For the purposes of this provision, the front line of the Lot shall be deemed to be the Lot line(s) which is contiguous to a street or road.

(iii) The Association may levy a construction fee. If actual cost of damage to Common Property exceeds the construction fee, the Association shall have the authority to levy a specific special assessment on the Lot for the cost of repair of the additional damage.

(iv) The exterior of all houses and other structures and site work and basic landscaping must be completed within one (1) year from the date of approval in accordance with the plans approved by the ABC, except where such would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities. All structures must be built in strict conformity with the plans and specifications as approved by the ABC and before any house may be occupied, it must be completely finished and a certificate of completion must be issued by the ABC. Said certificate will in no way be deemed a warranty as to the fitness of the structure or as to the conformity of the structure to the exact plans and specifications.

(v) Dwellings erected on any Lot shall have not less than one thousand (1,000) square feet of heated livable space on the main floor, and not less than a total of sixteen hundred (1,600) square feet of heated livable space in the entire dwelling. This floor space requirement shall be exclusive of any space in garages, carports and porches.

(vi) Before any house may be occupied, a proper and suitable septic tank shall be constructed on such Lot for the disposal of all sewage, and all sewage shall be emptied or discharged into such tanks or tank. No sewage shall be emptied or discharged into any marsh, creek or ravine, or onto the open ground. All sewage disposal systems must be designed, located, and constructed and maintained in accordance with the requirements, standards and recommendations of the appropriate public health authority of the State of Georgia. Approval of such system shall be obtained from such authority prior to commencement of construction and subsequent to its completion. Every dwelling house constructed on the Lots must have permanent plumbing and running water and permanent type sewage system. No temporary system of any kind shall be allowed.

(vii) No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance, except that with the prior written approval of the ABC, such tanks may be placed above-ground provided they are kept in a screened enclosure which must be compatible in appearance and locale to the previously constructed house. Any such screened enclosure must be at least one (1) foot higher than any tank placed therein.

(viii) No water well shall be sunk or drilled on any Lot. A tap-on fee on a per Lot basis, as determined by the Board of Directors, may be charged by the Association before any Owner is entitled to tap-on to any water supply furnished by the Association.

(ix) No lumber, brick, stone, cinder block, concrete, or any other building materials, scaffolding, mechanical devices, or any other thing used for building purposes shall be stored on any Lot except for the purpose of construction on such Lot, and such material shall not be stored on such Lots for longer than that length of time reasonably necessary for the construction in which the same is to be used.

(e) *Merger of Lots.* An Owner who owns two (2) adjoining Lots may, upon prior written approval of the Board, have such Lots merged and treated as a single Lot for all purposes including, but not limited to, assessments and voting. An Owner who owns three (3) adjoining Lots may, upon prior written approval of the Board, have such Lots merged and treated as a single Lot for all purposes (including voting), except for purposes of assessment, in which case the third Lot shall be assessed at one-half (½) the rate of assessment for an Unimproved Lot. Notwithstanding the above, no merger involving more than one (1) Improved Lot or more than three (3) Lots as

shown on the original plat of the Properties shall be permitted. Plats necessary to show the altered boundaries between the affected Lots shall be prepared and certified as to accuracy by a registered land surveyor approved by the Association and shall be executed on behalf of the Association to evidence its approval thereof. The requesting Owner shall be responsible for payment of all charges for preparation, execution and recordation thereof. The merger shall be effective upon recordation of approved plats and receipt by the Association of a copy thereof. Any Lot created by the merger of two (2) or three (3) Lots may be subdivided to restore the original boundaries pursuant to the same procedure as that for merger and upon payment of all assessments which otherwise would have been levied upon the separate Lots during the period in which they were merged, plus interest at the rate of ten percent (10%) per annum. Once a merged Lot is subdivided, each Lot shown on the revised plat after subdividing shall be considered a separate Lot for all purposes, including, but not limited to, assessments and voting.

(f) *Subdivision of Lots.* No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board.

(g) *Ingress and Egress to Lots.* Owners, Occupants, and their guests must enter and exit their Lots through the Skylake main entrance gate only, unless another means of ingress and egress is approved by the Board of Directors. Ingress and egress to Skylake shall be subject to additional rules and regulations issued by the Board of Directors.

(h) *Prohibition of Damage, Nuisance and Noise.* Without prior written Board consent, nothing shall be done or kept on the Property or any part thereof which would increase the rate of insurance on the Property, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive or offensive activity shall not be carried on upon the Property. Each Owner shall refrain from any act or use of his or her Lot or the Common Property which could reasonably cause embarrassment, discomfort, nuisance or annoyance to other Owners or Occupants. No Owner or Occupant of a Lot may use or allow the use of the Lot or any portion of the Property in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or Occupants of a portion of the Property, or in such a way as to constitute, in the Board's sole opinion, a nuisance. No Owner or Occupant of a Lot may use or allow the use of the Lot or the Common Property in any manner which creates disturbing noises between the hours of 11:00 p.m. and 7:30 a.m. that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of the other Owners or Occupants. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. Notwithstanding anything herein, the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or any other reason shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Georgia law.

No Owner shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Property or any structure created thereon, would reduce the value thereof, or would impair any easements or hereditaments thereto, without prior written consent of all Association members and their Mortgagees. No damage to or waste of the Common Property, or any part thereof, or of the exterior of any building constructed upon any Lot shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

(i) *Firearms and Fireworks.* The display or discharge of firearms or fireworks on the Properties is prohibited; provided, however, that the display of lawful firearms on the Properties is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Property to or from the dwelling on the Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25-10-1.

(j) *Pets.* No Owner or Occupant may keep any pets other than a reasonable number of generally recognized household pets on any portion of the Property, as determined in the Board's discretion. All dogs and cats must be registered and vaccinated by law. Horses are permitted on the Common Properties designated for such use. The keeping of pets on the Properties and their ingress, egress and travel on the Common Properties shall be

subject to such rules and regulations as may be adopted by the Board.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. All pets must be kept on a leash and be under the physical control of a responsible person at all times while outdoors in unfenced areas. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Property without prior written Board approval as provided in Paragraph 10 hereof.

No potbellied pigs may be brought onto or kept at the Property at any time. No dogs determined in the sole discretion of the Board to be dangerous dogs may be brought onto or kept on the Property at any time by any Lot Owner, Occupant, or guest of an Owner or Occupant. Any pet which endangers the health of any Owner or Occupant of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Property upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner and the pet owner may be fined.

Any Owner or Occupant who keeps or maintains any pet on any portion of the Properties shall be deemed to have indemnified and agreed to hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Properties.

(k) *Parking.* Vehicles, including motorcycles, shall be parked only in spaces designated for parking on the Common Properties or on the Owner's Lot.

The following vehicles are strictly prohibited from being parked, stored, or allowed to remain on the Properties (except in areas, if any, specifically designated by the Board of Directors for parking or storing an otherwise prohibited vehicle): disabled vehicles, stored vehicles, vehicles over twenty (20) feet in length or having more than four (4) wheels, trucks with a capacity of more than one (1) ton (other than mini-vans), boats and similar recreational vehicles, trailers of any kind, vehicles primarily used for commercial purposes, vehicles used for storage of machinery, equipment, tools, or similar materials, and vehicles with commercial writings on their exteriors. Mobile homes, motor homes and campers are also prohibited from being parked, stored, or allowed to remain on the Properties except as provided above; however, a motor home or camper which serves as the primary means of transportation for the Occupant or guest of any Lot shall be permitted on the Properties for a period not to exceed fourteen (14) consecutive days provided it is not used for residential purposes. Notwithstanding the above, commercial vehicles shall be allowed on the Properties between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of serving a Lot or the Common Properties; provided, no such vehicle shall be permitted to remain on the Properties overnight or for any purpose other than serving a Lot or the Common Properties. The Board may promulgate rules and regulations further restricting parking and traffic on the Properties as it deems necessary or desirable. Exceptions may be granted by the Board of Directors for emergencies or other special conditions.

For purposes of this subparagraph, a vehicle shall be considered "disabled" if (a) it does not have a current license tag or is obviously inoperable; and (b) is parked on the Properties for more than fourteen (14) consecutive days. A vehicle shall be considered "stored" if (a) it is set on blocks; and (b) remains on blocks for fourteen (14) consecutive days or longer without the prior written permission of the Board of Directors.

If any vehicle is parked on any portion of the Property in violation of this subparagraph or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Property stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot or dwelling, is obstructing the flow of traffic, is parked on any grassy area or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately. If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

(l) *Abandoned Personal Property.* Personal property, other than an automobile as provided for in subparagraph (k) of this Paragraph, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's dwelling, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

(m) *Signs.* Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee, except that one property identification sign not exceeding a total of six (6) square feet in total area which may identify the Owner, Lot number, and the name of the house if so desired. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing open houses, births, birthdays or other events for limited periods of time.

(n) *Rubbish, Trash, and Garbage.* All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in proper receptacles for collection. Containers for garbage and other refuse shall be underground or in a screened sanitary enclosure, which must be compatible in appearance and location to the previously constructed house. Any such screened sanitary enclosure must exceed in height by at least one (1) foot any garbage containers placed or to be placed therein. Incinerators for garbage, trash, or other refuse shall not be used.

(o) *Unightly or Unkempt Conditions.* The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Notwithstanding the above, minor automotive repairs and maintenance may be undertaken by an Owner or Occupant provided such activities are completed within twelve (12) hours after being commenced. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling or on a porch, deck or patio serving any Lot. Outside clotheslines are prohibited. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and similar items may be kept outside a dwelling.

(p) *Garage Sales.* No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Property.

(q) *Antennas and Satellite Dishes.* No transmission antenna, of any kind, may be erected anywhere on the Property without written approval of the Board of Directors or the Architectural Building Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Property, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as provided by this Section, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Property, whether attached to a home or structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

(r) *Solar Devices.* No artificial or manmade device which is designed or used for collection of or heating

by solar energy or other similar purposes shall be placed, allowed, or maintained upon any portion of the Property, including any Lot, without the prior written consent of the ABC.

(s) *Prohibition on Open Fires.* Open fires of any kind are absolutely prohibited on any Lot. Open fires shall be permitted on Common Properties only in places designated by the Board and subject to such rules and regulations as may be promulgated by the Board. Notwithstanding any provision in this Declaration or in the Bylaws, any Owner or Occupant may be fined up to Five Thousand (\$5,000.00) Dollars by the Board of Directors for violation of this subparagraph.

(t) *Trees.* No trees, shrubs, bushes, or other vegetation having a diameter of six (6) inches or more (measured four and one-half (4½) feet above the ground) shall be cut, destroyed, or mutilated except with the prior written approval of the Board or its designees; provided, however, dead trees, shrubs, bushes, or other vegetation shall be cut and removed promptly by the Owner after such dead or diseased condition is brought to the attention of the Board or its designee and permission for cutting and removal has been obtained. Notwithstanding any provision in this Declaration or in the Bylaws, any Owner or Occupant may be fined a base fine of up to Two Thousand Five Hundred (\$2,500.00) Dollars and an additional fine of up to Two Thousand Five Hundred (\$2,500.00) Dollars per tree by the Board of Directors for cutting, destroying or mutilating a tree, shrub or other vegetation with a diameter of six inches or more (measured four and one-half (4½) feet above the ground) without the prior written approval of the Board or its designee in addition to any other remedies of the Association without prior warning or notice. Any fine imposed pursuant to this paragraph shall be deemed to be an assessment against the Lot and may be collected in the same manner as provided for collection of assessments.

(u) *Swimming Pools and Spas.* No above-ground or in-ground swimming pool shall be erected, constructed, or installed on any Lot. No spas may be erected, constructed, or installed on any Lot unless its design, location and placement are approved by the Architectural Building Committee.

(v) *Street Lights.* No street lights may be installed on a Lot.

(w) *Time-Sharing.* Time-share estates, time-share intervals, time-share programs, time-share projects, and time-share uses as defined in O.C.G.A. § 44-3-162 are prohibited within the Properties. This section expressly prohibits time-share programs as provided for in Section 44-3-165(a) of the Georgia Time-Share Act (O.C.G.A. § 44-3-160 et seq.). The purpose of this section is to preserve the residential character of Skylake with minimal disturbance from move-in and move-out of Owners or Occupants and use by Owners.

Notwithstanding any other provisions of this Declaration, no person shall have any right whatsoever to annex to Skylake any real property used or to be used as a time-share estate, time-share interval, time-share program, time-share project, or time-share use.

## **12. LEASING.**

(a) *Definitions.* "Leasing" for purposes of this Declaration, is identified as regular, exclusive occupancy of a Lot by any person or persons other than the Owner.

(b) *General.* Lots may be leased only in their entirety; no fraction or portion may be leased; there shall be no subleasing of lots or assignment of leases unless prior written approval is obtained from the Board of Directors. Lot Owners must make available to the lessee copies of the Declaration, Bylaws, and rules and regulations. Except as specifically identified below, all leases shall be for a minimum term of at least thirty (30) days:

(i) Any Lot that has been rented at least once in the period between January 1, 1997 and July 1, 1998 may continue to be rented for periods of less than thirty days until title is conveyed to any person or entity other than the person or entity holding record title on February 8, 1999, after which conveyance the Lot shall automatically be subject to the minimum thirty (30) day lease term. As of the effective date of this Declaration, the following lots may be rented for periods of less than thirty days: A-13, B-3, BB-6; F-7; F-10, F-17; F-19; H-4; H-22; H-41/42; J-5; J-9; L-10; L-12; M-9; M-20; T-10; U-6; X-43; Y-2; Y-3; Y-36).

(ii) A Lot Owner in good standing shall have the right, for himself and/or his Immediate Family, to lease from another Lot Owner and occupy a Lot for a term of less than thirty (30) days. For purposes of this subsection the words "Immediate Family" shall be deemed to encompass only parents, grandparents, children, grandchildren, brothers and sisters and similar "step" relatives.

(iii) To avoid undue hardship, the Board of Directors shall be empowered to allow reasonable leasing of a Lot for less than a thirty (30) day lease term upon application in accordance with this subparagraph. Any Owner who believes that he or she must lease his or her Lot for less than thirty (30) days to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing for a term of less than thirty (30) days and such other information as the Board

may reasonably require. Those Owners who have complied with this subparagraph (a)(iii), have demonstrated that the inability to lease their Lot would result in undue hardship, and have obtained the requisite written approval of the Board may lease their Lots for lease terms of less than thirty (30) days for such duration as the Board reasonably determines is necessary to prevent undue hardship. When an application is approved, the Owner shall provide the Board with the information as required by subparagraph 12(c) below.

(c) *Lease Form and Approval.* All leases shall be in writing in a form approved by the Board of Directors or its designee. Copies of all leases shall be submitted for approval of the form prior to their taking effect. The Board of Directors shall make available a lease form which is deemed acceptable. If the Board of Directors or its designee fails to take action to approve or disapprove the form of any lease within ten (10) days of its submission, such lease shall be deemed approved. Failure to submit a lease to the Board of Directors prior to the lessee taking possession of the leased premises may result in a fine against the Owner for each day that the lessee occupies the Lot until a lease is submitted. If the Board of Directors or its designee disapproves the form of the lease, the deficiencies shall be identified so that the Owner may submit a lease which complies with this Declaration, the Bylaws, and any rules and regulations promulgated hereunder. This provision shall not be deemed to create a right of first refusal in the Association or any other Person.

Any Owner allowing his or her Lot to be occupied on a no-charge basis shall submit to the Skylake office a completed Skylake Guest Registration form no later than two working days before occupation begins.

(d) *Liability for Assessments and Compliance with Declaration, Bylaws, and Rules and Regulations.* Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) *Liability for Assessments.* The lessee agrees to be personally obligated for the payment of all assessments against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of the lessee's activities, including, but not limited to, activities which violate provisions of the Act, the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

Upon request by the Association, the lessee shall pay to the Association all unpaid annual and special assessments, as lawfully determined and made payable during the term of the lease and any other period of occupancy by the lessee; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due dates for monthly rental payments unpaid at the time of the Association's request. All such payments made by the lessee shall reduce, by the same amount, the lessee's obligation to make monthly rental payments to the lessor. If the lessee fails to comply with the Association's request to pay assessments, the lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required to make such payments to the Association if the lessee were the Owner of the premises during the term of the agreement and any other period of occupancy by lessee.

(ii) *Compliance with Declaration, Bylaws and Rules and Regulations.* The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure compliance with the foregoing. The lessor shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant there.

In the event that the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, such fine shall be assessed against the lessee; provided, however, if the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by

lessee, any Occupant, or any person living with the lessee is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof.

In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specifically assessed against the Lot and the owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(iii) *Use of Common Areas.* The owner of any leased Lot transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Properties, including, but not limited to, the use of any and all recreational facilities and other amenities.

(e) *Applicability of Paragraph 12.* This Paragraph 12 shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of the lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

### **13. SALE OF LOTS.**

A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof and assess the Owner for all costs incurred by the Association in determining his or her identity.

### **14. MAINTENANCE RESPONSIBILITY.**

(a) *Association's Responsibility.* The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which are located on the Common Property.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard. The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Property and other property not owned by the Association if the Board determines that such maintenance would benefit the Property.

(b) *Owner's Responsibility.* Each Owner shall maintain and keep his or her Lot and dwelling in good repair, condition and order. Such maintenance shall include all pipes, lines, ducts, conduits or other apparatus which are located within a Lot's boundaries (including all gas, electricity, water, and air conditioning pipes, lines, ducts, conduits or other apparatus serving only the Lot.) Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Any maintenance which involves an exterior change, including, without limitation, repainting or restaining of the exterior of improvements, shall require approval as provided in Paragraph 10 of this Declaration. Each Owner shall perform his or her responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, unless such injury or damage results directly and solely from the negligence or gross negligence of the Association. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience

or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(c) *Failure to Maintain.* If the Board determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair or, if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be an assessment and lien against the Owner and the Lot. If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner or Occupant or his/her/their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Lot, which shall become a lien against the Lot and shall be collected as provided herein for the collection of assessments.

(d) *Maintenance Standards and Interpretation.* The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

## **15. MORTGAGEE'S RIGHTS.**

(a) Unless at least two-thirds (2/3) of the first Mortgagees or Lot Owners give their consent, the Association shall not:

- (i) by act or omission seek to abandon or terminate the Property or the Association;
- (ii) change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (iii) partition or subdivide any Lot;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or rights-of-way for public purposes and the granting of other easements for the benefit of the Association shall not be deemed a transfer within the meaning of this clause); or
- (v) use hazard insurance proceeds for losses to the Common Property for other than the repair, replacement, or reconstruction of the Common Property.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required by the Association Legal Instruments for any of the actions contained in this Paragraph.

(b) Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

(i) any condemnation loss or any casualty loss which affects a material portion of the Common Property;

(ii) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Association Legal Instruments which is not cured within sixty (60) days;

(iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

(e) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 12 and 13 governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

## **16. GENERAL PROVISIONS.**

(a) *Enforcement.* Each Owner and every Occupant of a Lot shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to his or her Lot, if any. The Board of Directors may impose fines or other sanctions pursuant to Article V of the Bylaws, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Properties to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions as more particularly provided for in Article V of the Bylaws.

(b) *Security.* The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(c) *Dispute Resolution.* Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any officer or director, or the property manager of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than thirty (30) days from the date of receipt of the notice of hearing from the person requesting the hearing.

(d) *No Discrimination.* No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

(e) *Implied Rights.* The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

## **17. EMINENT DOMAIN.**

Whenever all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five percent (75%) of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Paragraph 9, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

## **18. ANNEXATION.**

Subject to the consent of the owner thereof, upon the affirmative vote of a Majority of the Owners present or represented by proxy at a meeting duly called for such purpose, the Association may annex additional real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the Clerk of Superior Court of the county in which the property to be annexed is located by a supplementary declaration describing the property being annexed. Any such supplementary declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such supplementary declaration, unless otherwise provided therein. Any such annexation may be subject to a fee established by the Board.

## **19. EASEMENTS.**

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

(b) *Easements for Use and Enjoyment.* Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;

(ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities in the Property for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

(iii) the right of the Association to borrow money as may be set forth in the Bylaws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property.);

(iv) the right of the Association to grant permits, licenses or easements across the Common Property, as authorized in this Declaration or the Bylaws; and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association and subject to the provisions of Paragraph 15(a) of this Declaration.

Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family, his or her tenants and guests, and shall be deemed to have made a delegation of all such rights to the Occupants of his or her Lot, if leased.

(c) *Easements for Utilities.* There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association may have installed to serve the Property. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

(d) *Easement for Entry.* The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board.

## **20. AMENDMENTS.**

Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding two-thirds (2/3) of the total eligible Association vote. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and filed in the White County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the White County, Georgia, land records, then such amendment or document shall be presumed to be validly adopted.

## **21. SEVERABILITY.**

Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

## **22. DURATION.**

The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

## **23. PREPARER.**

This Declaration was prepared by George E. Nowack, Jr., Weissman, Nowack, Curry & Wilco, P.C., 1349 West Peachtree Street, 15th Floor, Atlanta, Georgia 30309. IN WITNESS WHEREOF, the undersigned officers of Skylake Property Owners' Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original Bylaws were duly adopted by the requisite Members and the Association.