



NOTICE REGARDING COVENANTS AND/OR RESTRICTIONS

The following Covenants and/or Restrictions are added as a courtesy only and are NOT WARRANTED by the property owner, their broker or agent as to completeness, accuracy, currency, or enforceability. Any interested buyer prospect is urged as part of their due diligence to contact the relevant Community Association or developer to determine for themselves what covenants and/or restrictions currently apply, how long they may remain in force, and if any changes or amendments may be currently under consideration. Additionally, or alternatively, one may wish to consider hiring an attorney to conduct this search for them and provide advice as needed.

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CROSS REFERENCE
DEED/GEN BOOK 749
PAGE 671-672

OFFICIAL FANNIN COUNTY
CLERK'S OFFICE SUPERIOR COURT
FILED FOR RECORD 5/31/01
AT 4:10P M. RECORDED 5/31/01
BOOK 395 PAGE 229-31
CLERK OF SUPERIOR COURT

04334

RETURN RECORDED DOCUMENT TO: (Recording Information)
G. William Little, III, P.C.
P.O. Box 2670
Blue Ridge, GA 30513
8th District and 2nd Section
Land Lot #136
STATE OF GEORGIA
COUNTY OF FANNIN

**ROAD EASEMENT AND MAINTENANCE AGREEMENT AND
RESTRICTIVE COVENANTS FOR BEAR TRACKS SUBDIVISION**

This ROAD EASEMENT AND MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANTS FOR BEAR TRACKS SUBDIVISION is made this 10th day of April, 2001, by the undersigned J.P.F. Enterprises, Inc. (hereafter collectively referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of all that tract or parcel of land lying and being in Fannin County, Georgia, and being more particularly described below with any additional property added hereto by amendment (hereinafter referred to as the "Submitted Property"), said property being:

All that tract or parcel of land lying and being in the 8th District and 2nd Section of Fannin, Georgia and being part of Land Lot No. 136 of Fannin County, Georgia, being further described as Bear Tracks Subdivision, and being 60.73, acres, more or less, as shown on plat of survey prepared for Bear Tracks, prepared by Mark Chastain, G.R.L.S. #2718, dated April 10, 2001, said plat of survey being recorded in Plat Hanger C-108, Page(s) 5, 6, 7, 8, Fannin County Deed records. Said recorded survey is incorporated herein by reference thereto for a more complete and accurate metes and bounds description of the above-described property.

Said property is conveyed subject to all easements, restrictions, and rights of ways as set forth on said recorded plats or as appearing of record.

WHEREAS, Declarant desires to enhance the value and provide for the uniform development of the Subdivision;

NOW, THEREFORE, the Declarant hereby declares that the Submitted Property, as well as adjacent properties to be submitted by Developer and encumbered by these items, shall be held, conveyed, encumbered, used, occupied, and improved subject to the following covenants and restrictions, as well as easements and assessments, all of which are in furtherance of a plan for subdivision, improvement and sale of real property and every part thereof. The covenants, restrictions and easements set forth herein shall run with the land and shall be binding on all parties having or acquiring any right, title or interest therein or thereto, and shall, subject to the limitations herein provided, inure to the benefit of each Owner of property, his heirs, successors, and assigns.

1. The exterior of all structures to be constructed on any of said lots shall be completed within twelve (12) months from date that construction begins. No vinyl siding may be used on any structure, and all exterior must be of wood construction
2. No dwelling shall contain less than 1,000 square feet of heated living area on the first floor, exclusive of garages, basements, covered walks, open and/or screened porches, patios, terraces, pool areas or other similar areas.

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3. No inoperative cars, motorcycles, trucks, or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, that this provision shall not apply to any such vehicle being kept in an enclosed garage. There shall be no major repair performed on any motor vehicle on or adjacent to any Lots in the subdivision. All vehicles shall have current license plates.
4. No mobile, modular, prefab home or homes constructed in whole or in part off of any Lot will be allowed on any Lot. No prefabricated outbuildings shall be allowed on any Lot. No structure of a temporary nature shall be used as a residence either temporarily or permanently (including but not limited to trailers, basements, tents, shacks, garages, or barns).
5. Trailers and Commercial Vehicles - No parking of any travel trailer, or motor home (unless, in the case of a travel trailer or motor home, said travel trailer or motor home is housed in a completely enclosed garage), truck (excluding pickup truck), camper, tent, or other similar vehicle, outbuilding, or structure shall be placed on the property at any time for a period exceeding (48) hours. No industrial, commercial or farm equipment or vehicles, including without limitation dump trucks, moving vans, step vans, buses and lowboy trailers, shall be allowed to park or remain on the Property, except for so long as necessary for use in connection with ongoing construction.
6. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. Large and/or potentially vicious breeds of dogs are specifically excluded, and may not be raised, bred or kept on any lot.
7. Except during the construction of permanent improvements thereon, no Owner shall excavate or extract earth from any lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding lots.
8. Driveways, landscaping and the general appearance of an owner's lot shall be maintained in good order.
9. Garbage and trash - No trash, garbage, or other waste material or refuse shall be placed or stored on any Lot except in covered sanitary containers. All such sanitary containers must be stored in each home, or within an enclosure designed therefor, which must be at least five (5) feet from any Lot line.
10. Satellite Dishes - Satellite dishes twenty four (24") inches or less in diameter are permitted, but no satellite dish greater than (24") shall be allowed.
11. Outdoor lighting - All outdoor lighting shall be so shaded and directed such that the light therefrom is directed to fall only on the same premises where light sources are located.
12. Clotheslines - No garments, laundry, rugs or other articles may be aired or dried on any Lot.
13. Personal recreational vehicles such as motorcycles or ATVs shall be operated in a safe manner at a moderate speed (not to exceed 15 m.p.h.), and shall be operated in a fashion such that they are not a nuisance to the comfort, convenience and peaceful enjoyment of adjoining properties by their owners.
14. No structure shall draw power from a temporary pole except for a temporary pole necessary for the construction of a permanent home. Power shall be hooked up permanently, and all power must be run underground.
15. All Lots shall be used for residential purposes only and no business or business activity shall be carried on upon any Lot at any time, with the exception that rentals of homes in the submitted property shall be allowed for a period not to exceed (10) consecutive days, and said homes not to be used as rental residential primary residences. For any rentals made, there shall be an adult over the age of (18) onsite at all times that there is a person or persons less than (18) years of age onsite.

Additionally, this covenant shall not apply to any home-based business involving no retail traffic or storage of inventory/equipment.

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16. No sign of any kind shall be displayed to the public view on any lot except such signs as comply with the provisions hereof. Builders may display such signs as are normally utilized to advertise the property during the construction and sales period. After an Owner closes his purchase on any lot in the subdivision, the only signs permitted on his lot will be: (a) a professionally prepared sign for identification purposes (not more than one square foot in area); and (b) a single sign to sell said lot of a type used by Brokers in the area, with the usual wording, such sign to be no more than four square feet in size. In the event any such sign is unsatisfactory, the sign will be removed. These limitations shall apply to signs of all types, including banners, signs on cloth, paper, cardboard or other materials.
17. No lot owner may remove existing tree growth without the authorization of the architectural review committee, as below.
18. Any outbuilding built shall be subject to architectural review as below.
19. No parcel, or its configuration, as originally sold and conveyed by Developer, shall be thereafter altered in size or configuration, or subdivided, by any parcel owner or his successors and assigns, provided that, JPF Enterprises, Inc. reserves the unconditional right to alter the size or configuration, subdivide, or create new parcels, and/or to replat any unsold parcel, prior to its original sale and transfer to a parcel owner, and in such case any such altered or newly created parcels shall be subject to these covenants. Such configuration must be approved by the Fannin County Planning Commission.
20. Declarant herein grants, to all owners of the above-referenced lots, all necessary easements for installation and maintenance of all current and future utilities, with said installations contemplated to be within an area adjacent to the road system shown on the aforementioned plat.
21. All grading, including but not limited to clearing of house sites, installation of septic systems, etc., shall be contracted by Fitts Contracting, Inc., or as otherwise approved by said contracting company.

CONTROLLED ACCESS PROVISIONS

Decisions related to security measures, including, but not limited to, access privileges to visitors or service personnel shall be made as those detailed in DECLARATION OF HOMEOWNERS' ASSOCIATION FOR BEAR TRACKS SUBDIVISION. No decision shall apply to Developer or his designees, who shall have unlimited access until all lots have been transferred from Developer's ownership.

**DECLARATION OF HOMEOWNERS' ASSOCIATION
FOR BEAR TRACKS SUBDIVISION**

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Homeowners' Association" or "Association" shall mean and refer to Bear Tracks Subdivision Homeowners' Association, formed by the Developer.
- (b) "Properties" shall mean and refer to all such properties delineated as Bear Tracks Subdivision, as well as adjacent properties added by Developer to the "Submitted Property."
- (c) "Development" shall mean the entire Bear Tracks Subdivision, include all phases.
- (c) "Common Properties" shall mean and refer to the portions of the Properties described as "common area(s)," "common drive(s)," or as "street(s)," "road(s)," "walkway(s)," "pathway(s)," "pond access," "dock(s)," "parking area(s)," "utility service area(s)," "park(s)," and shall include, but not be limited to, all parts of the Properties conveyed by the Developer to the Homeowners' Association.
- (d) "Unit" or "Lot" shall mean and refer to any Lot shown on a plat of all, or part, of Bear Tracks Subdivision as now or hereafter recorded on the public records of Fannin County, Georgia.
- (e) "Declarant" shall mean and refer all entities or individuals referenced in the first paragraph of this document, their successors and assigns.

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(f) "Developer" shall mean JPF Enterprises, Inc., its successors and assigns.

(g) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties, including the Declarant with respect to any unsold Lot, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(h) "Member" shall mean and refer to all those Owners who are members of the Homeowners' Association as provided below.

Section 1: Membership and Voting Rights in the Association

Every person or entity who is a record Owner of a fee or undivided fee interest in any unit or Lot shall be a Member of the Homeowners' Association, provided that any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a Member. If two or more Lots (or portions thereof) are combined so as to serve as a residence Lot for one residence, said combined Lots shall be treated as one Lot for membership purposes. Declarant JPF Enterprises, Inc. shall not be required to pay dues or assessments on unsold Lots.

Section 2: Voting Rights

The Homeowners' Association shall have two classes of voting membership:

A. Class A: Class A members shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one vote per Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

B. Class B: The Class B Members shall be the Developer.

The Class B membership shall cease and become converted to Class A membership and entitled to vote as such on the happening of any of the following events, whichever occurs earlier:

1. When all lots in the Development have been transferred by Developer JPF Enterprises, Inc., its heirs or assigns to owners for residential purposes.
2. At the expiration of ten (10) years after the date of recording of this Declaration.

Class B members shall solely operate and control the Homeowners' Association until Class B members become Class A members (as above) or by voluntary conversion by the Class B members to Class A membership.

Anything in this Declaration, the Homeowners Association Articles of Incorporation or By-laws to the contrary notwithstanding, for as long as Developer is the Owner of any lot within the properties, no vote, decision, or action which requires the approval or a vote of a majority or more of the Members of the Homeowners' Association voting on said matter, irrespective of class, shall be effective or implemented until Developer has approved of or consented to same in writing directed to the Board of Directors of the Homeowners' Association.

Section 3: Declaration Superiority

Neither the Articles of Incorporation nor the by-laws shall, for any reason, be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail.

Section 4: Duties of the Association

The Homeowners' Association shall, in addition to such obligations, duties and functions as are assigned to it by other provisions of this Declaration, have the obligations, duties and functions (subject to the provisions of this Declaration), to do and perform each and every one of the following for the benefit of the Owners and for the maintenance, administration and improvement of the Properties:

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a. Lands All real estate encompassed in the above legal description is subject to the membership requirements set forth herein and in the by-laws.

b. Enforcement To take such action, whether or not expressly authorized herein or in any governing instrument, as may be reasonably necessary to enforce the restrictions, limitations, covenants, affirmative obligations, conditions and other provisions of this Declaration, and of the Articles of Incorporation and by-laws.

c. Operation and Maintenance of Common Property To own, operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Property, together with all easements for operation and maintenance purposes and for the benefit of the Homeowners' Association or its Members over and within the Common Properties; to keep all improvements of whatever kind and for whatever purpose from time to time located thereon in good order, condition and repair; and to maintain any parking areas and streets free and clear from obstructions and in a safe condition for vehicular use at all times.

The Homeowners' Association shall maintain and repair the road system and all security installations on said road system within the common properties.

d. Water and other Utilities Acquire, provide and/or pay for water, sewer, garbage disposal, electrical, telephone and gas, cable television, and any other necessary utility services for the Common Properties.

e. Taxes and Assessments To pay all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Homeowners' Association and/or any property owned by the Homeowners' Association. Such taxes and assessments may be contested or compromised by the Homeowners' Association; provided, however, that they are paid or a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes.

f. Dedication for Public Use To promptly dedicate such streets, roads and drives and such water, sewer, or other utility lines or facilities and appropriate easements as may be specified by Developer or the Homeowners' Association to such municipalities, utility companies, political developments, public authorities, or similar agencies or bodies as may be designated by Developer or the Homeowners' Association.

g. Insurance To obtain and maintain insurance as provided for by the by-laws or this Declaration.

h. Rule Making To make, establish, promulgate, amend or repeal any rules and regulations as may be deemed necessary by the Homeowners' Association.

i. Enforcement of Restrictions and Rules To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary or appropriate to enforce or effectuate any of the provisions of this declaration and the rules and regulations of the Homeowners' Association.

Section 5: Powers and Authority of the Homeowners' Association

The Homeowners' Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Homeowners' Association under this Declaration, the Articles of Incorporation and/or the by-laws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Homeowners Association including the following which are listed without intent to limit the foregoing articulation:

a. Assessments To levy assessments on the Owners of Lots and to enforce payment of such assessments, all in accordance with the provisions of this Declaration.

b. Right of Enforcement In its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of any provision of this Declaration and the rules and regulations

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promulgated by the Homeowners' Association, and to enforce, by mandatory injunction or otherwise, all of the provisions thereof.

c. Easements and Rights-of-Way To grant and convey to any third party easements and rights-of-way in, on, over, and under the Common Properties and any private streets located thereon for the purposes of constructing, erecting, operating or maintaining thereon, therein, or thereunder, (1) overhead or underground lines, cables, wires, conduits or other devices for the transmission of electricity and for lighting, heating, power, telephone, community television, radio and audio and antenna facilities and for other appropriate purposes; (2) public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes; and (3) any similar public or quasi-public improvements or facilities.

d. Right of Entry Without liability to any Owner, to cause its agents, independent contractors and employees, after notice, to enter upon any Lot or the exterior of any residence for the purpose of enforcing any and all of the provisions of this Declaration, for the purpose of maintain and repairing such Lot or residence if for any reason whatsoever the Owner thereof fails to maintain it in good condition and repair and so as to present an attractive exterior appearance as required by the Restrictive Covenants below.

e. Maintenance and Repair Contracts To contract and pay for, or otherwise provide for, the maintenance, restoration, and repair of all improvements of whatsoever kind and for whatsoever purpose from time to time located upon or within the Common Properties, including the road system and water system.

f. Insurance To obtain, maintain and pay for such insurance policies or bonds, whether or not required by provision of this Declaration or the by-laws, as the Homeowners' Association may deem to be appropriate for the protection or benefit of the Homeowners' Association, the Members of the Board, Owners, their tenants or guests, including but not by way of limitation, fire and extended coverage insurance covering the Common Properties, liability insurance, war risk insurance, boiler insurance, workmen's compensation insurance, malicious mischief insurance, automobile non-ownership insurance, and performance and fidelity bonds.

g. Utility Service To contract and pay for, or otherwise apply for, any necessary utility services including, but without limitation, water (subject to the Water specifications as below), sewer, garbage, electrical, telephone, cable television and gas services for the benefit of the Homeowners' Association.

h. Professional Services To contract and pay for, or otherwise provide for, any necessary services of architects, engineers, attorneys, certified public accountants, and such other professional and non-professional services as the Homeowners' Association deems necessary.

i. Street Maintenance To contract and pay for, or otherwise provide for, the construction, reconstruction, repair, replacement, or refinishing of any streets, roads, drives, parking areas, or other paved areas upon any portion of the Common Properties not dedicated to any governmental unit.

j. Protective Services To contract and pay for or otherwise provide for fire, security, and other such protective services as the Homeowners' Association shall from time to time deem appropriate or the benefit of the development, the Owners, their tenants and guests.

k. General Contracts To contract and pay for, or otherwise provide such materials, supplies, furniture, equipment, and labor as and to the extent the Homeowners' Association deems necessary.

m. Liens To pay and to discharge any and all liens from time to time placed or imposed upon any Common Property on account of any work done or performed by or on behalf of the Homeowners' Association in the fulfillment of any of its obligations and duties of ownership, maintenance, repair, operation or administration.

n. Controlled access provisions To make decisions related to security measures, including, but not limited to, access privileges to visitors or service personnel. These decisions shall not apply to Developer or his designees, who shall have unlimited access as long as lots remain unsold by Developer, its heirs or assigns.

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Section 6: Property Rights in Common Properties

A. Members' Easements of Enjoyment: Every member shall have a nonexclusive right, license, privilege, and easement of enjoyment in and to the Common Properties (if any), and such easement shall be appurtenant to and shall pass with the title to every Lot. In addition, Declarants do hereby grant unto the Owners of each Lot in the properties a nonexclusive easement in perpetuity for ingress and egress over and across the streets, roads and walks in the Common Properties for all lawful purposes.

B. Title to Common Properties: Declarants shall convey to the Homeowners' Association legal title to the Common Properties, subject, however, to the following covenant which shall be deemed to run with the land and shall be binding upon the Homeowners' Association, its successors and assigns:

In order to preserve and enhance the property values and amenities of the development, the Common Properties and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Properties shall include, but not be limited to, the repair of damage to roadways, walkways, outdoor lighting, fences, and landscape maintenance.

C. Extent of Members' Easements: The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Homeowners' Association, in accordance with its Articles and by-laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties.
- b. The right of the Homeowners' Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure.
- c. The right of the Homeowners' Association, as provided in its Articles and by-laws, to suspend the enjoyment right of any Member, except as to ingress and egress to and from such Member's Lot, for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.
- d. The right of the Homeowners' Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for the installation, maintenance, and inspection of lines and appurtenances for public and private water, sewer, drainage, cable television, telephone, electricity, gas and other utilities, and for completion of the development. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two thirds (2/3) of the votes irrespective of class of membership has been recorded, agreeing to such dedication, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.
- e. The right of the holder of a mortgage encumbering the Common Properties, upon foreclosure or proceeding in lieu of foreclosure, to enter upon and take possession of the Common Properties, for the purpose of operating, administering and maintaining said Common Properties for the use and benefit of all Owners of Lots within the Properties, subject to the terms, conditions and provisions of this Declaration.

D. Easement Reserved Unto Developer Over Common Property: The Developer hereby reserves unto himself, his successors and assigns, all necessary licenses, rights, privileges and easements over, upon, under and across all Common Property, including but not limited to, (1) the right to use the said properties for rights-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water or other public conveniences or development utilities; (2) the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thereon wells and pumping stations; (4) the right and easement of ingress and egress for purposes of development and construction; and (5) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of Bear Tracks Subdivision; provided, however, that said reservation and right shall not be considered an obligation of

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the Developer to provide or maintain any such utility, development, or service. Developer also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the Common Properties. Finally, the Developer reserves the right to establish and continue to use any sales offices, signs, or parking spaces located on the Common Properties in its effort to market the development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Developer after conveyance of Common Properties to the Homeowners' Association and Lot to an Owner until such time as such rights are specifically and expressly relinquished by Developer by reference to this provision. This paragraph may not be amended without the consent of the Developer.

E. Transfer of Easement by Developer: The Developer hereby covenants, for himself, his heirs, successors and assigns, that he will transfer the easements, licenses, rights and privileges reserved in this Declaration by Developer to the Homeowners' Association upon the sooner of 10 years from the date hereof or the sale by Developer of the last Lot held for sale in the ordinary course of business by Developer in any and all phases of the development.

Section 7: Covenant for Maintenance Assessments

A. Personal Obligation of Assessments: Claim of Lien: Each owner of any Lot (with the exception of the Developer) 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 Homeowners' Association: (1) Annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest and costs of collection including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property or Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for such delinquent assessments shall also pass to his successors in title, provided the Homeowners' Association has caused a claim of lien to be recorded in the Public Records of Fannin County giving notice to all persons that the Homeowners' Association is asserting a claim of lien upon the Lot prior to the conveyance of title to the Lot. Said claim of lien shall state the description of the residence, the name of the record Owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by an officer of the Homeowners' Association or by a managing agent of the Homeowners' Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien. Liens for assessment may be foreclosed by suit brought in the name of the Homeowners' Association in like manner as a foreclosure of a mortgage on real property. In such foreclosure, the Owner of a residence shall be required to pay a reasonable rental for the residence and the Homeowners' Association shall be entitled, as a matter of law, to the appointment of a receiver to collect the same.

B. Purpose of assessments: The assessments levied by the Homeowners' Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties, and in particular for the improvement and maintenance of properties, services, and facilities devoted to the purpose and related to the use and enjoyment of the Common Properties and of the Lots situated upon the Properties, including but not limited to:

1. Payment of operating expenses of said Homeowners' Association;
2. Lighting, improvement, maintenance and beautification of access ways and easement areas, and the acquisition, maintenance, repair and replacement of directional markers and signs and traffic control devices, and cost of controlling and regulating traffic on the access ways, which are the responsibility of the Homeowners' Association;
3. Maintenance, improvement, and operation of drainage easements and systems;
4. Management, maintenance, improvement and beautification of streets (the Homeowners' Association shall have sole control over and responsibility for road maintenance throughout the development and specific to the road system as originally designated on Developer's development plat of survey referred to above), lakes, ponds, buffer strips, and recreation areas and facilities;

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5. Garbage collection and trash and rubbish removal; but only when and to the extent specifically authorized by said Homeowners' Association;
6. Providing police protection, night watchmen, guard and gate services, but only when and to the extent specifically authorized by said Homeowners' Association;
7. Doing any other thing necessary or desirable, in the judgment of said Homeowners' Association, to keep the community neat and attractive or to preserve or enhance the value of the Properties therein, or to eliminate fire, health or safety hazards, or, which in the judgment of said Homeowners' Association, may be of general benefit to the Owners or occupants of lands included in the Properties.

C. Annual Assessments and Initial Assessment

Until the year beginning January 1, 2002, the annual assessment shall be \$100.00 per Lot, payable on the first day of each year. This annual assessment shall be prorated in the year of initial purchase. The funds produced by such assessments shall be for working capital of the Homeowners' Association. The annual assessment shall be paid directly to the Homeowners' Association, or, in the event the Association is not yet activated, to the Declarant to be held in accordance with the above provisions.

D. Increase of Assessments The Board of Directors of the Homeowners' Association shall annually, and on the 1st of each year, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment in advance for each year. Any new annual assessment exceeding one hundred ten percent (110%) of the assessment for the previous year shall have the approval of two-thirds (2/3) of the votes of Class B Members (if any) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance of the meeting and which notice shall set forth the purpose of the meeting. Should no Class B Members exist, then Class A members shall follow the same process and procedure to approve said assessment.

E. Special Assessments for Capital Improvements In addition to the annual assessments authorized by the above section, the Homeowners' Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties and/or road system, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

F. Quorum and Notice for any action as set forth in "Increase of Assessments" and "Special Assessments for Capital Improvements" Written notice of any meeting called for the purpose of taking any action authorized in this Section shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members in person or by proxy entitled to cast a majority of all the votes of each class of membership shall constitute a quorum.

G. Uniform rate of assessment Both annual and special assessments must be fixed at a uniform rate for all Lots, and shall be collected on an annual basis (by January 10th of each year).

H. Certificate of Payment The Homeowners' Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing and in recordable form, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

I. Effect of Nonpayment of Assessment; Personal Obligation; the Lien; Remedies of the Association If the assessments are not paid on or before fifteen (15) days after the date when due, then such assessment shall become delinquent and shall, together with interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

If the Annual assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The Homeowners' Association may bring an action of law against the Owner personally obligated to pay the

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same, or to foreclose the lien against the property, in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment interest as provided herein together with the costs of the action and collection of the assessment, including a reasonable attorney's fee and costs and fees on appeal. Reasonable attorney's fees and costs of collection shall be recoverable whether or not suit be brought. If the Homeowners' Association files a claim of lien on the public records of Fannin County, against any Lot, a seventy-five dollar (\$75.00) lien fee may be charged and shall be added to the unpaid assessment and secured by the lien hereby created.

Section 8: Architectural Control

A. Development Architectural Control No building, wall, residence, garage, or any other structural improvement, or change or alteration to the exterior of existing structures or improvements, or in the landscaping (except landscaping located in a concealed and fenced courtyard or privacy area adjacent to a residence) shall be commenced, erected, or maintained, nor shall any exterior addition to or change or alteration thereto be made until the plans and specifications showing the nature, kind, size, design, shape, finished grade elevation, height, materials, color and locations of the same shall have been submitted, together with a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes, shall have been approved in writing as to harmony of exterior design and location in relation to surrounding structures and topography by the Board of Directors of the Homeowners' Association or their appointees acting as an Architectural Review Board, sometimes herein referred to as the ARB. The provisions of this paragraph shall not apply to the Developer. So long as the Developer shall hold for sale in the ordinary course of business a Lot or residence in the properties, Developer shall have sole total control, membership, and authority over the ARB.

After the sale of the Developer's final lot, the ARB shall consist of three members, each being an Owner of a Lot in Bear Tracks Subdivision. Approvals or disapprovals shall be by a majority vote of ARB members present, all members of the ARB having had (30) days written notice of a meeting to consider submitted plans and issues.

1. Duties and Powers of the ARB The ARB shall have the following duties and powers:

- a. To promulgate from time to time residential planning criteria for the properties at the discretion of the ARB. Said planning criteria shall be set forth in writing and made available to all members and to all prospective members of the Homeowners' Association. Any planning criteria promulgated by the ARB shall be subject to final approval by the Board. Said planning criteria may include any and all matters considered appropriate by the ARB not inconsistent with the provisions of this Declaration; and
- b. To approve all homes, buildings, fences, walls, pools, decks, or other structures which shall be commenced, erected or maintained upon the Properties and to approve any exterior additions to, or changes or alterations therein, as herein provided, and to approve building plans and specifications and Lot grading and landscaping plans. The conclusion and opinion of the ARB shall be binding. If in its opinion, for any reason, including purely aesthetic reasons, the ARB should determine that said improvement, alteration, etc. is not consistent with the development plan formulated by the Developer or the planning criteria for Bear Tracks Subdivision or lands contiguous thereto, such alteration or improvement shall not be made.

2. Approval or disapproval Two (2) sets of plans, specifications and plot plans shall be submitted to the ARB by the Owner prior to applying for a building permit. The ARB approval or disapproval, as required by this Declaration, shall be in writing and set forth on one copy of the plans, etc. to be returned to the Owner. The remaining copy shall become the property of the ARB. In the event the committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or, in any event if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related criteria shall be deemed to have been fully complied with. Developer, the ARB, any agent or architect thereof, shall not be responsible in any way for any defects in any plan or specifications submitted, revised, or accrued in accordance with the requirements of the ARB, or for any structural or other defect in any work done according to such plans and specifications.

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3. Developer approval Notwithstanding any provision otherwise, for so long as the Developer owns any development lot, the Developer reserves the right to approve all contractors or builders constructing residences in the development; said approval not to be unreasonably withheld by Developer. The work approved must be substantially in accordance with the plans, specifications, and Lot plans, as submitted and approved.

B. Enforcement of Planning Criteria The Developer and the Homeowners' Association shall have the right to enforce the provisions hereof and the planning criteria. Should any Owner fail to comply with the requirements hereof, or of the planning criteria after thirty (30) days' written notice, the Developer and the Homeowners' Association shall have the right to enter upon the Lot, make such corrections or modifications as are necessary, or remove anything in violation of the provisions hereof or the planning criteria and charge the cost thereof to the Owner. Should the Developer or the Homeowners' Association be required to enforce the provisions hereof by legal action, the reasonable attorney's fees and costs incurred, whether or not judicial proceedings are involved, including the attorney's fees and costs incurred on appeal from judicial proceedings, shall be collectible from the Owner. The Developer and the Homeowners' Association, or their agents or employees shall not be liable to the Owner for any trespass or damages or injury to the property or person of the Owner unless caused by negligence.

C. Exemption for Developer Any provision of this Declaration to the contrary notwithstanding, for so long as Developer, its successors or assigns, shall hold for sale in the ordinary course of business a Lot or residence in the properties, Developer shall be exempt from the requirements of this Section with respect to approval by the ARB of plans and specifications for construction or alteration of any structure or improvement.

Section 9: Exterior Maintenance

A. Exterior Maintenance In addition to maintenance upon the Common Properties and rights of way, the Homeowners' Association shall have the right to provide exterior maintenance upon any vacant Lot or upon any improved Lot or the exterior of any residence situated thereon; subject, however, to the following provisions. Prior to performing any maintenance on a Lot or exterior of a residence located, thereon, the Board of Directors of the Homeowners' Association shall determine that said property is in need of repair or maintenance and is detracting from the overall appearance of the development. Prior to commencement of any maintenance work on a Lot or residence, the Homeowners' Association must furnish thirty (30) days' prior written notice to the Owner at the last address listed in the Homeowners' Association's record for said Owner notifying the Owner that, unless certain specified repairs or maintenance are made within said thirty (30) day period, the Homeowners' Association shall procure said repairs and charge same to the Owner. Upon the failure of the Owner to act within said period of time and to thereafter diligently pursue repairs or maintenance, the Homeowners' Association shall have the right to enter in or upon any such Lot, or to hire personnel to do so, to make such necessary repairs or maintenance as is specified in the written notice. In this connection, the Homeowners' Association shall have the right to paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trim and care for trees, shrubs, grass, walks, and other landscaping improvements, as well as general Lot cleanup, and removal of debris which, in the opinion of the Homeowners' Association, detracts from the overall beauty and setting of the property.

B. Assessment of Cost The cost of such exterior maintenance shall be assessed against the Lot upon which such maintenance is done immediately upon completion and shall be a lien upon the Lot and a personal obligation of the Owner and shall become due and collectible, along with costs of collection and attorney's fees, in the same manner as delinquent assessments above.

C. Access at Reasonable Hours For the purpose solely of performing the maintenance authorized by this Article, the Homeowners' Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any residence at reasonable hours on any day except Sundays and holidays (except that in an emergency situation, as determined by the Homeowners' Association, such notice need not be given and entry may be made on any day).

D. Insurance The Board of Directors may maintain public liability insurance, to the extent obtainable, covering the Homeowners' Association and each Homeowners' Association member, lessee and occupant and the managing agent, if any, against liability for any negligent act or commission of omission attributable to them which occurs on, in, or with respect to the Common Properties or functions of the Homeowners' Association, including those functions of the ARB. All insurance premiums for such coverage shall be paid for by the Homeowners' Association.

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WATER USE, MAINTENANCE AND EASEMENT AGREEMENT

There is located on the Development a Water System servicing the submitted property and all other properties added by amendment. Developer, his heirs and assigns retains an easement for installation, maintenance and repair of said system over all the submitted property.

All future lot owners of Bear Tracks Subdivision and all other properties added by amendment shall have a permanent and perpetual right to contract for water service (and may obtain water service only from said Water System) from the above-described water system as detailed in the Water Agreement for the subdivision.

At the point of tap-on to the water system (per the terms of the owners' water agreement), the owner shall pay \$800.00 as a tap-on fee for installation of each water meter. These fees shall not include installation fees associated with running a water line from the meter to the owner's dwelling, said running of this water line and maintenance of same, as well as any filtration equipment and maintenance, shall remain the responsibility of the Owner.

ROAD MAINTENANCE ASSESSMENTS

Personal Obligation of Assessments: Claim of Lien: All purchasers of Lots within Bear Tracks Subdivision, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree to pay to an Association or group of lot owners formed for the purpose of administering said funds, (1) Annual assessments or charges for regular road maintenance within Bear Tracks Subdivision; and (2) special assessments for emergency repairs to said roads within Bear Tracks Subdivision, these assessments to be established by:

1. For annual assessments for regular road maintenance: The Owners (by a majority vote) shall prorate an estimated budget (to begin at \$200.00 per year in 2001 and to be prorated for the remainder of the year of the closing of the initial sale of the lots) for said maintenance among all owners of lots in Bear Tracks Subdivision (one share per lot owned). Each lot's owner(s) shall then be responsible for this prorated amount, to be paid prior to January 10 of the year of the assessment.
2. By a majority vote of all lot owners, special assessments for emergency repairs or upgrades to said road shall be established, with each lot owner responsibility for a pro-rata share of said approved emergency assessment (one share per lot owned).

The annual and special assessments, together with interest and costs of collection including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property or Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for such delinquent assessments shall also pass to his successors in title, provided a claim of lien has been recorded in the Public Records of Fannin County giving notice to all persons that a claim of lien upon the Lot is being asserted, prior to the conveyance of title to the Lot. Said claim of lien shall state the description of the residence, the name of the record Owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by 1) an officer of the Homeowners' Association (if said Association has been established) or 2) by a representative of a majority of the lot owners in Bear Tracks Subdivision. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, said satisfaction being executed either 1) by the record individual filing the lien, 2) an officer of the Homeowners' Association (if said Association has been established) or 3) by signatures indicating a majority of all lot owners. Liens for assessment may be foreclosed by suit brought in the name of the Homeowners' Association in like manner as a foreclosure of a mortgage on real property.

Developer shall have no affirmative obligation upon developer for the future upkeep and maintenance of the subdivision roads.

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RESERVATION BY DEVELOPER OF ROAD EASEMENT

The Developer, and Declarants to Developer, hereby reserves unto himself and grant to Developer, his successors and assigns, all necessary licenses, rights, privileges and easements over, upon, under and across all property, including but not limited to, (1) the right to use the said properties for rights-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water or other public conveniences or subdivision utilities; (2) the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thereon wells, pumping stations, water mains, trunks and feed lines to individual properties; (4) the right and easement of ingress and egress for purposes of development and construction; and (5) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of Bear Tracks Subdivision; provided, however, that said reservation and right shall not be considered an obligation of the Developer to provide or maintain any such utility, development, or service. Developer also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the property. Finally, the Developer reserves the right to establish and continue to use any sales offices, signs, or parking spaces located on the property in its effort to market the development. The easements and rights-of-way herein reserved shall continue in existence in favor of the Developer until conveyance of all lots in Bear Tracks Subdivision has occurred and Developer has filed a written EXTINGUISHMENT OF EASEMENT document with the Clerk of Superior Court, Fannin County.

DURATION AND AMENDMENT

This declaration and the restrictions contained herein shall run with and bind the submitted property for a period of twenty years from and after the date when this declaration is filed for record with the Clerk of the Superior Court of Fannin County, after which time this declaration and the restrictions shall be automatically renewed for successive periods of ten years; provided, however, that after the end of the said twenty year period and during any ten year renewal period (but only during such renewal period), this declaration and the restrictions contained herein may be terminated by an instrument executed by 2/3 of the lot owners and recorded in the Office of the Clerk of the Superior Court of Fannin County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument. During the period of Developer's ownership of one lot or more, these items may be amended for clarification, correction, and general improvement of lifestyle and comfort in Bear Tracks Subdivision.

MISCELLANEOUS

1. Severability - A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.
2. Constructive Notice - Each owner, by his acceptance of a deed or other conveyance of a lot, acknowledges for himself, his heirs, legal representatives, successors and assigns, that he is bound by the provisions of this declaration, including, but not limited to, the easement provisions for all homeowners provided in this document.
3. Binding Effect - This declaration shall be binding upon the undersigned, its heirs, administrators, successors and assigns. Said declaration shall run with the title to the property described above and any subsequent property that is added hereto by amendment.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal as of the day and year first above written.

Signed, sealed and delivered in the presence of:

JPF Enterprises, Inc.
By: James P. Fitts, III (SEAL)
Its: President

Witness
Notary Public
My Commission Expires:

