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Proposed Amendments for Owner Review and Vote

[SPACE ABOVE RESERVED FOR RECORDING DATA]

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Attention: Ashley Miller Lanier

STATE OF GEORGIA
COUNTY OF GILMER

Reference: Deed Book: 218
Page: 567

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR BIG CREEK MOUNTAIN**

IMPORTANT NOTICE:

THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.

CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING BOTH ASSESSMENTS/ CHARGES DUE ON LOTS AND ANY UNCURED ARCHITECTURAL VIOLATIONS OR UNAUTHORIZED IMPROVEMENTS ON LOTS, PURSUANT TO THE PROVISIONS HEREOF.

COPYRIGHT ©2007. All rights reserved. This Amended and Restated Declaration may be used only in connection with the ownership and sale of property at Big Creek Mountain and the operation of the Big Creek Mountain Home Owners Association, Inc.

PREPARED BY:

Weissman Nowack
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CHANGING THE LANDSCAPE

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WHEREAS, United Properties Incorporated, a Georgia corporation, recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Big Creek Mountain, recorded on March 1, 1988, in Deed Book 218, Page 567, et seq., Gilmer County, Georgia Records (hereinafter referred to as the "Original Declaration"); and

WHEREAS, plats of survey related to the property were filed in Plat Book 16, Page 141, Plat Book 16, Page 142, Plat Book 16, Page 143, Plat Book 16, Page 144, Plat Book 17, Page 195, Plat Book 17, Page 195A, Plat Book 17, Page 195B, Plat Book 26, Page 166, Plat Book 26, Page 166A, Plat Book 26, Page 167, Gilmer County, Georgia Records; and

WHEREAS, Article XI, Section 4 of the Original Declaration provides that the Original Declaration may be amended by at least 2/3 voting membership in the Association; and

WHEREAS, in accordance with Article V, Section 6 of the Bylaws of Big Creek Mountain Home Owners Association, Inc. ("Original By-Laws"), the Original By-Laws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of Members representing a majority of the total votes of the Association; and

WHEREAS, the required percentage of Members have agreed to amend the Original Declaration and Original By-Laws;

NOW, THEREFORE, the Original Declaration, the Original By-Laws, and all exhibits thereto, are hereby stricken in their entirety and the following is simultaneously substituted therefor:

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LIST OF EXHIBITS

EXHIBIT "A"	-	DESCRIPTION OF SUBMITTED PROPERTY
EXHIBIT "B"	-	BYLAWS
EXHIBIT "C"	-	SAMPLE OWNER CONSENT FORM

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1. NAME.

The name of the Community is Big Creek Mountain (hereinafter sometimes called "Big Creek Mountain"), 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:

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

(b) **Architectural Control Committee** or **ACC** means the committee established to exercise the architectural review powers set forth in Paragraph 8 hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee.

(c) **Area of Common Responsibility** means the Common Property, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.

(d) **Articles or Articles of Incorporation** mean the Articles of Incorporation of Big Creek Mountain Home Owners Association, Inc., filed with the Secretary of State of the State of Georgia.

(e) **Association** means Big Creek Mountain Home Owners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

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

(g) **Board or Board of Directors** means the body responsible for management and operation of the Association.

(h) **Bylaws** mean the Bylaws of Big Creek Mountain Home Owners Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference.

(i) **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.

(j) **Common Expenses** mean the expenses incurred or anticipated to be incurred for the general benefit of all Lots, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Property.

(k) **Community-Wide Standard** means the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board and the Architectural Control Committee.

(l) **Domestic Partner** shall mean any adult who cohabitates with an Owner, and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed

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with the Association's Secretary. A person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.

(m) **Effective Date** means the date that this Declaration is recorded in the Gilmer County, Georgia land records.

(n) **Electronic Record** means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form, such as e-mail, web pages, electronic documents, and facsimile transmissions.

(o) **Electronic Signature** means a signature created, transmitted received, or stored by electronic means and includes but is not limited to a secure electronic signature.

(p) **Eligible Mortgage Holder** means a holder of a first Mortgage secured by a Lot who has requested in writing notice of certain items as set forth in this Declaration.

(q) **Lot** means a portion of the Community intended for ownership and use as a single-family dwelling site as permitted in and submitted to this Declaration and as shown on the plats for the Community, or amendments or supplements thereto, recorded in the Gilmer County, Georgia land records.

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

(s) **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.

(t) **Mortgagee** or **Mortgage Holder** means the holder of any Mortgage.

(u) **Occupant** means any Person staying overnight in a dwelling on a Lot for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such property.

(v) **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.

(w) **Owner** means the record title holder of a Lot, but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Lot shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Lot.

(x) **Person** means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(y) **Community** 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 Community 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.

(z) **Secure Electronic Signature** means an electronic or digital method executed or adopted by a Person with the intent to be bound by, or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data are changed, the electronic signature is invalidated.

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3. LOCATION, PROPERTY DESCRIPTION, AND PLATS.

The real property in the Community subject to this Declaration and the Act is located in Land Lot 111 of the 6th District of Gilmer County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference, and shall include any owner of property within Phase II and Phase III of Big Creek Mountain who shall by one or more deeds of conveyance, amendment or supplement to the Declaration, or by recorded Written Consent submit his or her property to the terms of the Declaration.

4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) **Membership.** All Lot Owners, by virtue of their ownership of a Lot in the Community are members of the Big Creek Mountain Home Owners Association, Inc. 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.

Additionally, an owner of property within the development commonly referred to as the Big Creek Mountain and located within Phase II and Phase III shall become a Member of the Association upon submittal of the property to the Declaration by one or more deeds of conveyance, amendment or supplement to the Declaration, or by recorded Written Consent. For purposes of this Section, a Written Consent shall be the instrument utilized by Owners to confirm that their property is bound to the terms of the Declaration and to consent to membership in the Big Creek Mountain Home Owners Association, Inc.

(b) **Voting.** The Owner(s) of the Lot shall be entitled to one equally weighted vote for such Lot, which vote may be exercised and suspended as provided in this Declaration and the Bylaws.

5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

(a) **General Allocations.** 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 the Lots equally.

(b) **Specific Special Assessments.** 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.

(i) 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 specifically specially assessed equitably among all of the Lots which are benefited according to the benefit received.

(ii) 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 specifically specially assessed against such Lot(s), including attorney's fees incurred by the Association in enforcing the Declaration, Bylaws or Association rules.

(iii) Any and all review fees, application fees, impact fees, etc. may be specifically assessed against such Lot(s).

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6. ASSESSMENTS.

(a) **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 more specifically authorized from time to time by the Board.

(b) **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; (iii) specific special assessments; and (iv) Capital Contribution Assessments against any particular Lot which are established pursuant to the terms of this Declaration, including but not limited to reasonable fines imposed in accordance with the terms of this Declaration.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs and expenses), 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 Gilmer County, Georgia records evidencing the lien created under the Act and this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the annual assessments shall be paid annually. 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 lien provided for herein shall have priority as provided in the Act.

(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, any part or installment thereof or any other fine, special assessment or charge is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board:

(ii) a late charge equal to the greater of Ten and No/100 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;

(iii) interest at the rate of ten percent (10%) per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date; and

(iv) upon thirty (30) days' written notice to the Owner, the Board may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner shall thereby lose the privilege of paying any and all assessments and charges in installments for that fiscal year, unless such privilege is otherwise reinstated in the Board's sole discretion.

(v) 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 Owner's and Occupant's

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rights to vote and use the Common Property shall be automatically suspended until all amounts owed are paid in full (provided, however, the Board may not deny ingress or egress to or from a Lot) and the Association, acting through the Board of Directors, 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. Enforcement under this subparagraph is not dependent upon or related to other restrictions and/or other actions.

(vi) If any assessment, fine or other charge is delinquent for thirty (30) days or more, in addition to all other rights provided herein and in the Act, the Association shall have the right upon thirty (30) 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, electricity, heat, air conditioning and cable television, 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.

(vii) If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorney's fees, costs and expense, then to costs and attorney's fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies which are created by the application of current payments to outstanding delinquent assessments or charges.

(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 Community during the coming year, and the Board shall establish the annual assessment or installments for the coming year. The Board shall cause the budget and notice of the assessment(s) to be delivered to each member at least thirty (30) days prior to the due date for such assessment, or the first installment thereof. 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 Association membership; 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, the Board may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners, notice of which shall be sent to all Owners. In order to be effective, any special assessment (except as provided in Paragraph 5(b) regarding the power to impose specific special assessments and Paragraph 13(b) regarding repair or reconstruction of casualty damage to or destruction of all or part of the Community) which would cause the average total of special assessments levied in one (1) fiscal year to exceed Two Hundred and No/100 Dollars (\$200.00) per Lot or such higher amount as may be authorized by the Act, must first be approved by at least two-thirds (2/3) of those Owners either voting by ballot or written consent pursuant to the Bylaws, or at least two-thirds (2/3) of those Owners present or represented by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting.

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(f) **Capital Budget and Contribution.** The Board of Directors may, but shall not be obligated to, annually prepare a capital reserve budget that 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 may, but shall not be obligated to, set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Subparagraph (d) of this Paragraph. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

(g) **Capital Contribution Assessment Upon Transfer of Lots.** In addition to all other assessments, fees and charges provided for herein, the purchaser or grantee of every Lot shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Capital Contribution Assessment") upon each and every conveyance or transfer of the Lot to any person other than to the spouse or heir of the Owner. For the fiscal year of the Effective Date, the Capital Contribution Assessment shall be \$250.00. The Board may increase the Capital Contribution Assessment each year not more than ten (10%) percent above the prior year's Capital Contribution Assessment amount.

The Capital Contribution Assessment shall be due and payable by the purchaser or grantee at the time of conveyance or transfer of the Lot and shall be collected at the closing of each such conveyance or transfer. The Capital Contribution Assessment shall not constitute an advance payment of annual assessments. The Capital Contribution Assessment shall constitute a specific special assessment and continuing lien against such Lot, and a personal obligation of the Owner of such Lot, from the time it is due until it is paid in full and may be collected pursuant to Paragraph C above. A Capital Contribution Assessment shall not be levied when a Lot is sold by Declarant to a builder for the purpose of construction of a home for re-sale or to any person or entity purchasing the Lot for the purpose of constructing a dwelling for resale.

(h) **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 and No/100 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 and No/100 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.

(i) **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, at the option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners; or (3) added to the Association's capital reserve account as set forth in Paragraph F above.

(j) **Exempt Property.** The following property shall be exempt from assessments:

(I) All Common Property; and

(II) All real property owned by J R Development 633, LLC or J R Development Homebuilders, LLC as the successor developer of the Community until such time as a certificate of occupancy is issued for the dwelling located on the Lot.

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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 sole 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 in the Area of Common Responsibility is caused through the willful or negligent act of any Owner or Occupant or 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 the personal obligation of the Owner, a lien against the Lot and shall be collected as provided herein for the collection of assessments.

The Association shall repair incidental damage to any Lot resulting from performance of work that is the responsibility of the Association. Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

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 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 of Directors 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, then, 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 sole 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 added to and become a part of the assessment to which the Owner is subject, shall become and be the personal obligation of the Owner and 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

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7. MAINTENANCE RESPONSIBILITY.

(a) **Owner's Responsibility.** Each Owner shall maintain and keep his or her Lot and dwelling in good repair, condition and order. In addition, each Owner shall maintain any right of way or easement located between the Owner's Lot and the curb of the street(s) bordering such Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Each Owner shall perform his or her responsibility hereunder in such manner so as not to unreasonably disturb other Lot Owners.

Each Owner shall also be obligated:

(i) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots.

(ii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

(iii) Not to make any alterations in the portions of the Lot which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Lot which would or might jeopardize or impair the safety or soundness of any Lot without first obtaining the written consent of the Board of Directors of the Association and all Lot Owners and Mortgagees of the Lots affected, nor shall any Lot Owner impair any easement without first obtaining written consent of the Association and of the Lot Owner or Owners and their Mortgagees for whose benefit such easement exists.

(iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Lot Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Lot Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Lot Owner's next chargeable assessment.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Property) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(b) **Association's Responsibility.** The Association shall maintain and keep in good repair the Area of Common Responsibility. 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 and any and all roadways and detention facilities located within the Community. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve the Common Property, to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

The Association shall also maintain all wells, if any, serving multiple Lots assessing the costs of such maintenance equally between all Lots utilizing said well as a Specific Special Assessment. Other than existing common use wells on the Effective Date herein, the Association shall have no obligation to provide water service to any other Lot.

The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Community and other property not owned by the Association if the Board determines that such maintenance would benefit the Community.

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or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

8. ARCHITECTURAL CONTROLS.

(a) **Architectural Control Committee.** The Architectural Control Committee ("ACC") shall constitute a standing committee of the Association. Until one hundred (100%) percent of the Lots in the Community have been sold by J R Development 633, LLC and/or J R Development Homebuilders, LLC to third parties in the normal course of development and sale, the J R Development 633, LLC shall have the right to appoint all members of the ACC. Once this authority is voluntarily surrendered or 100% of the Community is sold, the members of the ACC shall be appointed by the Board of Directors. The ACC 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 ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications.

The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder either for new construction or existing modifications, and any such fees be deemed assessments and shall be published in the design standards and/or rules and regulations. These fees may include, but shall not be limited to, application fees, review fees, impact fees, road use fee, contractor fees, etc. All such fee shall be deemed an assessment and collected as an assessment as set forth herein.

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

- (i) make any encroachment onto the Common Property,
- (ii) construct any dwelling or other improvement on a Lot,
- (iii) make any exterior change, alteration or construction on a Lot (including painting, regrading or significant landscaping modifications), or any alteration of the Lot which affects the exterior appearance of the Lot, or
- (iv) erect, place or post any object, sign, clothesline, playground equipment, light, storm door or window, artificial vegetation, exterior sculpture, fountains, flags or other thing on the exterior of the Lot, on the dwelling on the Lot, in any windows of the dwelling (other than appropriate window treatments as provided herein), or on any Common Property.

(c) **Required Action by Board or ACC.** Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. Except as may otherwise be determined by the Board, the ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations. The Association, acting through the Board, shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property 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 standard for approval of such improvements shall include, but not be limited to: (1) aesthetic consideration, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the Board or ACC, (4) harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding

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structures and topography, and (5) any other matter deemed to be relevant or appropriate by the Board or ACC.

If the Board or ACC fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the Board or ACC may reasonably require have been submitted, then the Owner submitting the application may issue written notice, via certified mail, to the Association President, informing the President of the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within ten (10) days of receipt of the Owner's notice, the approval will not be required and this subparagraph will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, Bylaws or rules and regulations of the Association, or of any applicable zoning or other laws.

(d) **Condition of Approval.** As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration. In the discretion of the Board of Directors or the ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

(e) **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 of Directors nor the ACC 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 of Directors, the ACC, nor 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 of Directors, the ACC, or any member thereof, for any such injury, damage or loss.

(f) **No Waiver of Future Approvals.** Each Owner acknowledges that the members of the Board of Directors and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. [Each Owner further acknowledges that the Board of Directors and ACC may adopt different architectural standards for different parts of the Community, based on street visibility and location of the proposed modification.] The approval of either the Board of Directors or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors or the ACC, 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.

(g) **Commencement and Completion of Construction.** All changes, modifications and improvements approved by the ACC hereunder must be commenced within six (6) months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. All work approved by the ACC hereunder shall be completed in its entirety within ninety (90) days from the date of commencement (new construction of a dwelling shall be completed in its entirety within one year), unless otherwise agreed in writing by the ACC. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement.

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9. USE RESTRICTIONS.

Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Association Legal Instruments. 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, tenants or Occupants, as a result of such person's violation of the Association Legal Instruments, 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, tenants or Occupants.

In addition to the following use restrictions, the Board of Directors may adopt rules and regulations 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 portion of the Community, except that the Owner or Occupant residing in a dwelling on a Lot may conduct business activities within the dwelling so long as:

(1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the dwelling;

(2) the business activity does not involve visitation of the dwelling by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential dwelling without business activity;

(3) the business activity is legal conforms to all zoning requirements for the Community;

(4) the business activity does not increase traffic in the Community in excess of what would normally be expected for residential dwellings in the Community without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

(5) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(6) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents in the Community, as determined in Board's discretion; and

(7) the business activity does not result in a materially greater use of Common Property facilities or Association services.

The terms "business" and "trade," as used in this provision, shall 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.

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(ii) **Number of Occupants.** The maximum number of Occupants in a dwelling on a Lot shall be limited to two (2) people per bedroom in the dwelling. "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a dwelling on the Effective Date hereof. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

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 without the express written consent of the Board as determined in the Board's sole discretion.

(b) **Subdivision of Lots and Outbuildings.** No Lot may be subdivided into a smaller Lot and no structure of a temporary character, unless approved in writing by the ACC. Notwithstanding the above, the 16.80 acres submitted to the Declaration herein shall be permitted to be subdivided into one or more Lots by J R Development 633, LLC or the then Owner of the property subject to approval and re-platting by Gilmer County, Georgia. No trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected or used by any Owner or Occupant in any portion of the Community, at any time, either temporarily or permanently, without the prior written approval of the Board.

(c) **Use of Roadways and Common Property.** There shall be no obstruction of the roadways, nor shall anything be kept, parked or stored on or removed from any part of the roadways without prior written Board consent, except as specifically provided herein. 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 or roadways.

All Owners and Occupants are prohibited from using the detention pond area for any recreational purpose without the express permission of the Board. There shall be no swimming or boating the pond or detention pond, if any.

(d) **Prohibition of Damage, Nuisance and Noise.** Without prior written consent of the Board, nothing shall be done or kept in the Community or any part thereof which would increase the rate of insurance for the Association, 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, offensive or unsanitary activity shall not be carried on in the Community. No Owner or Occupant may use or allow the use of the Lot or any portion of the Community at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Community. In this regard, specific unauthorized and unreasonable annoyances or disturbances shall include, but not be limited to, the following:

(i) Any fighting, screaming, shouting, whistling, playing of music, raucous behavior or insobriety in the Community, if such conduct can be heard in the normal course of activities from within a dwelling on any other Lot;

(ii) The use of any alarm, equipment or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations, if such sounds can be heard or vibrations felt in the normal course of activities from within a dwelling on any other Lot;

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(iii) Any threatening or intimidating conduct towards any resident, guest or pet in the Community;

(iv) Any conduct which, in the Board's reasonable discretion, creates any danger or risk of injury to others or damage to property in the Community, or which creates any threat to health or safety of any other resident or pet in the Community;

(v) Any conduct which creates any noxious or offensive odor in the Community if such odors can be detected in the normal course of activities from any other Lot;

(vi) Any incessant or excessive pet noises, including dog barking, if such conduct can be heard in the normal course of activities from within a dwelling on any other Lot;

(vii) Any construction or similar activities on a Lot, between the hours of 9:00 p.m. and 7:30 a.m., which can be heard from within a dwelling on any other Lot; or

(viii) Any similar action or activity in the Community which unreasonably interferes with the peaceful use and enjoyment of other Lots or the Common Property by any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and 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 otherwise 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 Lot Owner or Occupant may use or allow the use of the Lot or the Common Property in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Lot that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Community or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in the Community, without prior written consent of all Association members and their Mortgagees.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and 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 otherwise 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.

(e) **Firearms.** The display or discharge of firearms on the Common Property is prohibited; provided, however, that the display of lawful firearms on the Common Property 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 Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

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(f) **Pets.** No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. No structure for the care, housing, or confinement of any pet shall be constructed or maintained in any part of the Community without prior written ACC approval. All pets must be kept on a leash and be under the physical control of a responsible person at all times while outdoors in areas which are not fully enclosed by a physical fence. Feces left by pets upon the Common Property, on any Lot or in any dwelling, including the pet owner's Lot or dwelling, must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs, venomous snakes, pit bulldogs, rottweillers, Doberman pinschers, or other animals determined in the Board's sole discretion to be dangerous dogs may be brought onto or kept in the Community at any time. The Board may require that any pet which, in the Board's opinion, endangers the health of any Owner or Occupant of any Lot or which creates a nuisance or unreasonable disturbance, be permanently removed from the Community upon seven (7) days' written notice. 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. Without prior notice to the pet's owner, the Board may remove any pet, which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any community member.

Any Owner or Occupant who keeps or maintains any pet in any portion of the Community shall be deemed to have agreed to indemnify and 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 in the Community.

(g) **Parking.** Vehicles only may be parked in garages, driveways on Lots, designated parking spaces, or other areas authorized in writing by the Board. Vehicles may not be parked on any grass or landscaped areas on Lots.

Disabled vehicles are prohibited from being parked in the Community, except in garages. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable.

Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, full-size vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes and containing visible evidence of commercial use (such as tool boxes or tool racks), and vehicles with commercial writings on their exteriors (except for Sheriff's, Marshall's or police officer's vehicles marked as such) are also prohibited from being parked in the Community, except: (1) in garages or as otherwise approved by the Board, or (2), in the case of service vehicles, on a temporary basis during daytime business hours or during emergencies for the purpose of serving a Lot.

Notwithstanding the above, construction equipment may remain on the property overnight without constituting a violation herein for a limited time period during the construction of a Lot. All construction must be pre-approved by the ACC and, the ACC may request names of contractors and subcontractors who will be accessing the property and utilizing such equipment.

If any vehicle is parked in any portion of the Community in violation of this Paragraph or in violation of the Association's rules and regulations, the Board or agent of the Association 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 the person or entity that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. 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 Board or agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

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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, is parked in a space which has been assigned as exclusively serving another Lot, 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.

(h) **Signs.** Except as may be provided for herein or as may be required by legal proceedings, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain in the Community without the prior written consent of the Board or its designee, except that two (2) professional security signs not to exceed six (6") inches by six (6") inches each in size may be displayed on a Lot and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed two (2') feet by two (2') feet in size may be displayed on a Lot being offered for sale or for lease. 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.

(i) **Rubbish, Trash, and Garbage.** All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. 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.

(j) **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 in any part of the Community. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling.

(k) **Drainage/Sprinkler Systems.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. If drainage grating and/or headwall are located on a Lot, the Owner of such Lot shall be responsible for ensuring that such drainage grating and/or headwall is clear of obstruction and debris to allow for proper drainage flow. Furthermore, no Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(l) **Erosion Control; Contamination.** No activity which may create erosion or siltation problems in any portion of the Community shall be undertaken on any Lot without the prior written approval of the Board of Directors or its designee of plans and specifications for the prevention and control of such erosion or siltation. Such plans and specifications shall be designed by a professional engineer licensed in the State of Georgia and all costs and expenses related thereto shall be borne exclusively by the Lot Owner. The Board of Directors or its designee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, by way of example and not of limitation, physical devices for controlling the run-off and drainage of water, special precautions in grading, clean-up activities and requiring landscaping as provided for herein. No activity which results in contamination of or any damage to any stream, water course or any other Lot shall be conducted on any Lot, and each Owner shall be liable for all resulting damages from such activity and for restoration of a property damaged from contamination resulting from or attributable to such activity.

(m) **Abandoned Personal Property.** Personal property, other than an automobile as provided for in Subparagraph (i) of this Paragraph, shall not be stored kept, or allowed to remain for 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

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known, the Board or the agent of the Association may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property. The notice shall include the name and telephone number of the person or entity that 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.

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.

(n) **Impairment of Dwellings and Easements.** An Owner shall do no act nor any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditaments, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

(o) **Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

(p) **Mailboxes.** In the event a mailbox is destroyed or damaged, it shall be replaced or restored to its original appearance, unless prior approval is given by the ACC for a different mailbox.

(q) **Garage Sales.** No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

(r) **Garages.** No Owner or Occupant shall park his or her car or other motor vehicle in any portion of the Community, other than in the garage, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible; provided, however, that all garage conversions in existence on the Effective Date, and made in compliance with all of the terms of the Original Declaration, shall not constitute a violation of this requirement.

(s) **Antennas and Satellite Dishes.** Except as provided below in this subparagraph, 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 in any portion of the Community, 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. The following shall apply to all Lot Owners:

(i) No transmission antenna, of any kind, may be erected anywhere in the Community without written approval of the Board of Directors or the Architectural Control Committee.

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(ii) 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 in any portion of the Community, including a Lot.

(iii) 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.

Any such items shall be installed in the least conspicuous location available on the Lot that permits reception of an acceptable signal.

(t) **Trees.** No tree with a diameter of six inches or greater measured at a point one foot from the ground shall be removed from any Lot without the prior written approval of the ACC, unless such removal of the tree is deemed an emergency threatening life or property.

10. LEASING.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Paragraph.

(a) **Definition.** "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner, provided, however, for purposes of this Declaration, leasing shall not include exclusive occupancy by the child or parent of an Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing hereunder. If an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, manager or member of such limited liability company, partner of such partnership, beneficiary or other designated agent of such trust, or agent of such other legal entity shall be deemed an Owner of such Lot for purposes of this Paragraph. Such person's designation as an Owner of such Lot pursuant to this Paragraph shall terminate automatically upon the termination of such person's relationship with the entity holding record title of the Lot.

(b) **Leasing Provisions.** Leasing of Lots shall be governed by the following provisions:

(i) **General.** Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner a form that is deemed acceptable. There shall be no subleasing of Lots or assignment of leases without prior written Board approval. Within seven (7) days after executing a lease agreement for the lease of a Lot, the Lot Owner shall provide the Board with a copy of the lease and the name of the lessee and the names of all other people to occupy the Lot. The Lot Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations.

(ii) **Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments.** Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a Lot, 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:

(iii) **Compliance With Declaration, Bylaws, and Rules and Regulations.** The Owner and lessee shall comply with all provisions of the Declaration, Bylaws and Association rules and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance. The Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws

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and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such Occupants are fully liable and may be sanctioned for any such violation.

If a Lot is leased or occupied in violation of this Paragraph or if the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, the Association's Board of Directors shall be authorized, in addition to all other available remedies, to levy fines against the lessee and/or the Owner and to suspend all voting and/or Common Property use privileges of the Owner, Occupants and unauthorized tenant(s).

If a Lot is leased or occupied in violation of this Paragraph, the Association may require the Owner to evict the tenant. If the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, such violation is deemed to be a default under the terms of the lease and shall authorize the Owner or the Association, as more fully described herein, to terminate the lease without liability and 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 as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.

(1) **Use of Common Property.** The Owner 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 Property, including, but not limited to, the use of any and all recreational facilities.

(2) **Liability for Assessments.** When a Lot Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, 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 Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under Paragraph 7 herein as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(c) **Applicability of this Paragraph.** Leases existing on the Effective Date hereof shall not be subject to the terms of subparagraph (b) above. Such leases may continue in accordance with the terms of the Original Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Paragraph. Any Owner of a Lot which is leased on the date this Declaration is recorded in the Gilmer County land records shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Declaration is recorded in the Gilmer County, Georgia land records.

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

11. 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. As part of the notice, the current Owner shall furnish the Board 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.

At the closing of the conveyance or transfer of the Lot to any person other than to the spouse or heir of the Owner, the purchaser/grantee shall pay to the Association the non-refundable, non-prorated Capital Contribution Assessment, as set forth in Paragraph 6(g) above.

Within seven (7) days after receiving title to a Lot, the purchaser or grantee of the Lot shall give the Board written notice of his or her ownership of the Lot. As part of the notice, the new Owner of the Lot shall furnish the Board his/her/their name(s) and mailing address(es) and such other information as the Board may reasonably require. 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.

12. INSURANCE.

(a) **Hazard Insurance on Common Property and Lots.** 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 (\$1,000,000.00) dollars.

(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 benefited parties, as further identified in subparagraph (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.

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(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 annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(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 canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;

(4) a provision that no policy may be canceled, 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 canceled 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 or management company, if any, maintains a separate bank account 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; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) 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 canceled, 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, steam boiler coverage, and flood insurance, if and to the extent

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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 subparagraphs (a) and (c) of this Paragraph for insurance on the Common Property. Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association.

(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 the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total cost of repair, or otherwise as the Board reasonably determines equitable, unless the insurance policy provides that the deductible will apply to each Lot separately. 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.

13. REPAIR AND RECONSTRUCTION AFTER CASUALTY DAMAGE.

In the event of damage to or destruction of all or any part of the Community insured by the Association as a result of fire or other casualty, unless eighty (80%) percent of the Lot Owners, 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. 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.

(a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to portions of the Community insured by the Association, 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.

(b) **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.

(c) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Community 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.

(d) **Encroachments.** Encroachments upon or in favor of Lots which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Lot Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Community was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

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(e) **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), Owners and/or personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

(f) **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 8 of this Declaration, unless a determination not to rebuild is made by the Lot Owner in cases of substantial damage or destruction. Unless otherwise approved in writing by the Board, the Owner of the damaged Lot shall complete all restoration and rebuilding of the improvements on the Lot within six (6) months of the date of the casualty, damage or destruction of the improvements. 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, sod all portions of the Lot on which the removed structure was located, and, thereafter, continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

14. 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 (75%) percent 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 13 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.

15. EASEMENTS.

(a) **Easements for Use and Enjoyment.** Every Owner and Occupant 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 Lot 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 Community for any period during which any assessment or charge 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, the right of the Association to limit the use and enjoyment of any facility now or hereafter situated upon the Common Property to the owners of Lots and their respective families, tenants and guests; the right of the Association to limit the number of guests of Lot Owners and tenants; the right of the Association to permit use and enjoyment of the Common Areas by persons other than Owner of Lots; the right of the Association to charge reasonable fees for the actual use of or participation in a particular recreational facility or activity now or hereafter situated or provided upon the Common Property (which charges and fees, unless paid separately, shall be added to and become part of the assessment or portion thereof next coming due to which the Lot Owner is subject);

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(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 Community (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 Lot Owner, or the holder of any Mortgage, Irrespective of when executed, encumbering any Lot or other property located within the Community.);

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

(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

(vi) all other rights of the Association, Owners and Occupants set forth in this Declaration or in any deed conveying the Common Property to the Association; and

(vii) all encumbrances and other matters shown by the public records affecting title to the Common Property.

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.

(b) **Easements for Utilities.** There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining: (a) all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity; (b) any water runoff and storm drainage systems; and (c) any other services 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 Community. 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.

(c) **Easement for Entry.** The Association shall have an easement and the right, but not the obligation, to enter onto any Lot for emergency, security and safety. The 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.

(d) **Easement for Association Maintenance.** The Association shall have an easement across all portions of the Community, as are necessary to allow for the maintenance required hereunder, including, without limitation: (a) an easement over Lots on which landscape easements, sign easements or utilities easements are located as shown on the Survey for maintenance of the easement areas; and (b) an easement over Lots to allow for maintenance of any lake(s), dam(s) and shoreline(s) located within the Community. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect the property, and damage shall be repaired

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by the Person causing the damage at its sole expense. In order to allow the exercise of rights created pursuant to this easement concerning the maintenance of lake(s), no tree or structure may be placed within fifteen (15) feet of the line formed by the highest normal pool elevation of any lake without the prior written approval of the Board or its designee.

(e) **Easements for Maintenance and Repair.** There shall be reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping located on each Lot which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Lots and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to damage.

(f) **Easement for Street Signs.** There is hereby reserved to the Association, and the designee of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all street signs.

(g) **Easement for Entry Features.** There is hereby reserved to the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot which is bounded by the right-of-way providing primary access to the Community and every other Lot located at the corner of a street intersection. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features. Owners shall not alter, remove or add improvements to any entry features on any Lot, or any part of any easement area associated therewith without the prior written consent of the ACC.

(h) **Public in General.** The easements and rights created in this Paragraph do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Gilmer County, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Community), all or any portion of the Community that, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

(i) **Access to Lots.** The ownership of any Lot located within the Development shall include, as an appurtenance thereto, a perpetual nonexclusive easement and right of access, ingress and egress between the Lot and Big Creek Road (a Gilmer County, Georgia public road) over, across and upon those certain private roads, rights-of-ways and easements shown and identified on those certain plats of survey as may from time to time be filed by Declarant in the offices of the Clerk of Superior Court of Gilmer County, Georgia. Said private roads shall not be relocated and the use thereof shall not be impaired without written consent of the Owners of all Lots, as well as the holders of all mortgages, served or affected thereby; provided, however, the Association shall have the authority to place reasonable restrictions upon the use of such private roads, as herein elsewhere set forth. Said easement and right of access, ingress and egress shall be appurtenant to and shall pass with the title to each and every Lot which is now or hereafter made subject to this Declaration; and, irrespective of whether any other term, condition or provision of this Declaration is altered, amended, modified, rescinded or terminated, said easement and right of access, ingress and egress shall be perpetual and shall run with and bind the land and shall not be altered, amended, abrogated, modified, rescinded or terminated with respect to any Lot

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unless the Owner thereof, as well as the holder of any mortgage affected thereby, specifically consents thereto by an instrument duly recorded in the office of the Clerk of Gilmer County.

16. MORTGAGEE'S RIGHTS.

(a) **Approval of Actions.** 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 Community 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 except as anticipated in Paragraph 9(b) herein;

(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 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 any portion of the Community (whether to Lots or to Common Property) for other than the repair, replacement, or reconstruction of such portion of the Community.

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) **Liability for Assessments.** 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) **Right to Information.** 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 Community or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;

(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

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

(d) **Right to Financial Statement.** 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) **Leasing and Sales.** 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.

17. AUTHORITY AND ENFORCEMENT

The Community shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply with this Declaration, the Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations. In addition to any rights the Association may have against an Owner's family, guests, tenants or Occupants, as a result of such person's violation of the Association Legal Instruments, 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, tenants or Occupants.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote and/or to use the Common Elements for violation of any duty imposed under the Declaration, Bylaws or Association rules. However, nothing herein shall authorize the Association or the Board of Directors to deny ingress and egress to or from a Lot. If any Occupant of a Lot violates the Declaration, Bylaws or Association rules, a fine may be imposed against the Owner and/or Occupant, as set forth below. The failure of the Board to enforce any provision of the Declaration, Bylaws or Association rules shall not be deemed a waiver of the right of the Board to do so thereafter.

In any enforcement action taken by the Association under this Paragraph, to the maximum extent permissible, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred, may be assessed against the violating Owner and/or Occupant pursuant to Paragraph 8(b)(ii) above.

(a) **Fining and Suspension Procedure.** The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Common Elements, unless and until the Association has sent or delivered written notice to the violator as provided in subsection (f) below. However, compliance with this subparagraph shall not be required for the following: (i) late charges on delinquent assessments; (ii) suspension of voting rights if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic; (iii) suspension of the right to use the Common Elements if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to use the Common Elements shall be automatic; provided, however, suspension of parking privileges shall require compliance with Paragraph 9(c)(iv) above; and (iv) suspension of common utility services, which shall require compliance with the provisions of Paragraph 9(c)(v) above.

(i) **Notice.** If any provision of the Declaration or Bylaws or any Association rule is violated, the Board shall send the violator written notice identifying the violation and fine(s) and/or suspension(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or the fine(s) and/or suspension(s) or to request reconsideration of the fine(s) and/or suspension(s). Fines and/or suspensions may be effective or commence upon the sending of

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such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine(s) and/or suspension(s). In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

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

(b) **Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking regulations) and/or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity for compliance with the procedure set forth in subparagraph (a) above.

The Association or its duly authorized agent shall have the power to enter a Lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws or the rules and regulations; provided, however, the violating Owner or Occupant is given at least two (2) days prior written notice requesting that the violation be removed and abated and the property restored to substantially the same condition as existed prior to the structure, thing or condition being placed on the property and causing the violation. Such removal, abatement and restoration shall be accomplished at the violator's sole cost and expense. If the Association exercises its right subject to this subparagraph, all costs of self-help, including but not limited to, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner or Occupant and shall constitute a lien against the Lot. All such amounts shall be collected as an assessment pursuant to this Declaration. Additionally, the Association shall have the authority to record in the Gilmer County land records a notice of violation identifying any uncured violation of the Declaration, Bylaws or rules and regulations regarding the Lot.

(c) **Failure to Enforce.** Notwithstanding the above, no right of action shall exist against the Association for failure of enforcement where: (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action therefore at law or in equity and has failed to do so.

18. 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 sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof. 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 Gilmer County, Georgia land records.

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").

Proposed Amendments for Owner Review and Vote

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 Glimmer County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

19. GENERAL PROVISIONS.

(a) **SECURITY.** THE ASSOCIATION MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SECURITY IN THE COMMUNITY; 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 THE ASSOCIATION SHALL NOT HAVE A DUTY TO PROVIDE SECURITY IN THE COMMUNITY. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE COMMUNITY AND COMMIT CRIMINAL ACTS IN THE COMMUNITY NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS IN THE COMMUNITY WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN.

(b) **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 twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

(c) **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.

(d) **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.

(e) **Electronic Records, Notices and Signatures.** Notwithstanding any other portion of this Declaration, records, signatures and notices shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws shall govern the giving of all notices required by this Declaration.

(f) **Duration.** The covenants and restrictions of this Declaration shall run with and bind the real property in the Community perpetually to the extent provided in the Act.

(g) **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.

Proposed Amendments for Owner Review and Vote

(h) **Water Service.** Each Lot Owner shall independently provide for water service to their individual Lot. In no event shall the Association be deemed responsible for or required to provide any water service to any part of the Property subject to the Declaration.

20. PREPARER.

This Declaration was prepared by Ashley Miller Lanier, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326

Proposed Amendments for Owner Review and Vote

IN WITNESS WHEREOF, the undersigned officers of Big Creek Mountain Home Owners Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original By-Laws were duly adopted by the required majority of the Association and its membership, with any required notices duly given.

This _____ day of _____, 200_____.

**BIG CREEK MOUNTAIN HOME OWNERS
ASSOCIATION, INC.**

Sworn to and subscribed to before
me this ____ day of _____,
200____.

By: _____ (Seal)
President

Witness

Attest: _____ (Seal)
Secretary

Notary Public
[Notary Seal]

[CORPORATE SEAL]

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on