

DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND EASEMENTS
FOR BIG CREEK MOUNTAIN, a private community

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Exhibits

EXHIBIT "A"

DEFINITIONS

EXHIBIT "B"

PROPERTY SUBJECTED TO DECLARATION

EXHIBIT "C"

OPTION PROPERTY

EXHIBIT "D"

NOTICE OF LIEN

EXHIBIT "E"

RIGHTS, EASEMENTS, AND USE RESTRICTIONS

010

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
BIG CREEK MOUNTAIN, a private community

THIS DECLARATION, made on the date hereinafter set forth by United Properties Incorporated, a Georgia corporation (hereinafter sometimes called "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of all of the real property described in Section I of Article II of this Declaration; and

WHEREAS, Declarant desires to subject all of said real property described in Section 1 of Article II hereof to the provisions of this Declaration and to provide for the subjecting of other real property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the real property described in Section 1 of Article II of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens (sometimes referred to herein collectively as "covenants and restrictions") hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title or interest in all or any portions of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof.

ARTICLE I

DEFINITIONS

Unless the context shall prohibit, certain words used in this Declaration shall have the definitional meaning set forth in Exhibit "A" attached hereto and by reference made a part hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Hereby Subjected to This Declaration. The real property which is, by the recording of this Declaration, subjected

to the covenants, conditions, restrictions, easements, assessments and liens hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B" attached hereto and by reference made a part hereof.

Section 2. Other Property. Only the real property described in Section 1 of this Article III is hereby made subject to this Declaration; provided, however, by one or more deeds of conveyance or supplementary declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration as hereinafter provided.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot in the Development shall be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be members. Membership shall be appurtenant to the Lot to which it appertains and shall be transferred automatically by conveyance of that Lot. Membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

Section 2. Voting. The Association shall have two classes of membership.

(a) Class A: Initially, the Class A members of the Association shall be the Owners of the Lots described in Exhibit "B" attached hereto and by reference made a part hereof, with the exception of Declarant. If the same Owner owns more than one Lot, such Owner shall be a Class A member and shall have membership privileges and pay assessments with respect to each Lot so owned. Initially, Class A memberships shall be non-voting memberships excepting such matters and in such events as hereinafter specified. Class A members shall be entitled to full voting privileges at such time as the Class B membership, as hereinafter defined, shall terminate and cease to exist.

When entitled to vote, Class A members shall be entitled to one vote for each Lot owned. When more than one person owns a Lot, the vote or votes for such Lot shall be exercised as they among themselves determine. In the event of disagreement among such persons and an attempt by two or more of them to cast such vote or votes, such persons shall not be recognized and such vote or votes shall not be counted.

(b) Class B: The sole Class B member of the Association shall be the Declarant or Declarant's successors or assigns. Class B membership shall be a full voting membership entitled to cast one

thousand (1000) votes on any matter requiring a vote of the membership of the Association, and, during its existence, any act of the Association requiring the approval or affirmative vote of the membership shall not be valid unless approved by the Class B member. At the election of the Class B member, the Class B membership shall terminate and cease to exist at any time on or before the completion of development and sale by Declarant of all Lots to be developed in the Development (i.e., said real property described in said Exhibit "B" attached hereto and any real property which may hereafter be subjected to the provisions of this Declaration as herein provided). From and after the date on which the Class B membership shall so terminate and cease to exist, the Class B member shall be and become a Class A member, as the case may be, with respect to any Lot(s) owned by it.

Section 3. Meetings. Except as may be herein otherwise provided, all matters concerning meetings of members of the Association, including the time within which and the manner in which notice of any meetings shall be given to said members, and the quorum required for the transaction of business at any of such meetings shall be as specified in the Articles of Incorporation or By-Laws of the Association, as amended from time to time, and by law.

Section 4. Casting of Votes. Subject to the provisions of this Declaration and the Articles of Incorporation, the votes of the members shall be cast under rules and procedures as may be prescribed in the By-Laws of the Association, as amended from time to time, and by law.

Section 5. Amplification. The provisions of this Article are to be amplified by the Articles of Incorporation and By-Laws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners of Lots as set forth herein. In the event of any conflict or inconsistencies between this Declaration, the Articles of Incorporation or the By-Laws of the Association, this Declaration and the Articles of Incorporation (in that order) shall prevail.

ARTICLE IV

ASSESSMENTS

Section 1. Purpose of Assessments. The assessments provided for herein shall be used for the purpose of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots in the Development and, in particular, the common fund may be assessed to cover the following: (i) management fees and expenses of administering the Association; (ii) common utility bills and charges for other common services, including, but not limited to, water service; (iii) cost of any policies of insurance purchased by the Association, including fire and other hazard coverage for the Common Property, public

liability coverage for the Association, including its officers and directors, and such other insurance coverage as the Board of Directors determines to be in the interest of the Association and Lot Owners; (iv) acquisition, improvements, maintenance and operation of properties, services and facilities devoted to such purposes and related to the Common Property, and including but not limited to the payment of taxes thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, as well as for the establishment and maintenance of one or more reasonable reserve funds for such purposes as to cover the repair and replacement of Common Property, the construction, maintenance and repair of roads and drainage systems throughout the Development, security of other Common Property unforeseen contingencies or deficiencies, or for emergency expenditures of such other matters as may be authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each owner of any Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association assessments which shall be fixed, established and collected from time to time as herein provided. Such assessments, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made. Such lien shall be perfected by filing of record in the office of the Clerk of the Superior Court of Gilmer County a claim of lien within one (1) year after the assessment, or portion thereof, for which a lien is claimed became due. The claim of lien shall be substantially in the form attached hereto as Exhibit "D" and, by reference, made a part hereof. Such a claim of lien shall also secure all assessments, or portions thereof, which come due thereafter until the claim of lien is cancelled of record. Also, irrespective of whether the lien therefor shall be valid or enforceable, each Owner shall be personally liable for the portion of any assessment coming due while he is the owner of the Lot, and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor; provided, however, that if such grantor or grantee shall request a statement from the Association in accordance with the provisions of Section 7(c) of this Article IV, such grantee, his successors, successors-in-title and assigns, shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against such grantor in excess of the amount set forth in such written statement, if any.

Section 3. Annual Assessments. It shall be the duty of the Board of Directors of the Association at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated costs of operating the Association during the coming year.

Such budget (and the assessments levied to satisfy the same) shall make provision for the buildup and maintenance of an adequate reserve fund for repair and replacement of those portions of Common Property that must be repaired or replaced on a periodic basis. The Board shall cause the budget, and the assessments to be levied against each Lot Owner for the following year, to be delivered to each Lot Owner at least thirty (30) days prior to the annual meeting. The budget and the assessments therefor shall become effective unless (i) the proposed budget for the ensuing calendar year exceeds the immediately preceding annual budget by twenty percent (20%) and (ii) such proposed budget is disapproved at the annual meeting by a vote of members of the Association representing at least a majority (more than 50%) of the total votes of the entire membership. In the event the membership disapproves the proposed budget under such circumstances, or the Board fails for any reason so to determine the budget for the ensuing year, then and until such time as a budget shall be determined at a subsequent special meeting called pursuant to the provisions of Section 5 below, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, provided that any such special assessment in excess of two hundred percent (200%) of the then applicable Annual Assessment shall first have the assent of members of the Association representing at least a majority (more than 50%) of the total votes of the entire membership of the Association and by Declarant so long as Declarant shall own one or more Lots in the Development.

Section 5. Notice of Meetings. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be given to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. Such notice shall be given by personally delivering the same to any individual designated by a member to the Secretary of the Association, or by mailing a copy thereof by U.S. Mail, postage prepaid, to the last known place of residence or to such other address as may be furnished by such member to the Secretary of the Association. Notice shall be considered given when personally delivered to any such designated individual or when deposited in the U. S. Mail, as the case may be. Any member may waive notice of the meeting by doing so in writing before or after the meeting. Attendance at a meeting, either in person or by proxy, shall of itself constitute a waiver of notice.

Section 6. Rate of Assessment. Any annual or special assessment levied by the Association in accordance with the foregoing provisions hereof, shall be allocated between and among the Owner of all Lots subject to this Declaration on an equal basis. The effective date of an annual assessment shall be July 1, the first day of each fiscal year covered by the assessment period.

Section 7. Assessment: Due Dates.

(a) The annual assessment for the fiscal year 1987 shall be \$150.00 in respect to each Lot. The annual assessment for fiscal year 1987 and subsequent years shall be determined by the Board of Directors of the Association in accordance with the provisions of Section 3 of this Article IV and written notice thereof shall be sent to every Owner subject thereto not less than thirty (30) days in advance of the due date thereof. Unless otherwise provided by the Association's Board of Directors, the annual assessment for the fiscal year 1988 shall be due and payable on or before September 1, 1988 and the due date of subsequent annual assessments shall be September 1st of the subsequent year or such other date between September 1 and June 30 as the Board of Directors may decide. Provided, however, in the case of any Lot first conveyed by Declarant after July 1, 1987, the first annual assessment payable in respect to such Lot shall be prorated on a monthly basis to the date upon which such Lot is first conveyed by Declarant (the "commencement date") and shall be due and payable at the time such Lot is first conveyed by Declarant.

(b) The special assessments payable to the Association, as provided for in this Article IV, shall be due on the date(s) specified by the Association's Board of Directors.

(c) The Association shall, upon demand at any time, furnish to any Owner liable for any such assessment a certificate in writing signed by either the President or Treasurer of the Association, or by the manager of the Association, if any, setting forth whether the same has been paid. A reasonable charge, as determined by the Association, may be made for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(d) The Board of Directors of the Association shall have the right to waive all or any portion of any annual assessment, and except as otherwise provided in Section 9 of this Article IV, such waiver shall be uniform as to all Lots, provided, however, that no assessments shall accrue as to any Lot owned by Declarant until the occurrence of the earlier of a transfer of such Lot by Declarant or the issuance of a certificate of occupancy as to any dwelling constructed by Declarant on any Lot.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment, or portion thereof, not paid when due shall be delinquent. If any assessment or portion thereof is not paid within five (5) days after the due date, then a late charge equal to ten (10%) percent of the amount thereof or \$5.00, whichever is greater, shall also be due and payable to the Association. If any assessment or portion thereof is delinquent for a period of more than five (5) days, then, if not paid within ten (10) days after written notice is given to

the Lot Owner to make such payment, the entire unpaid balance of the assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full. Any assessment or portion thereof not paid when due shall bear interest from the date of delinquency until paid at the rate of twenty-one percent (21%) per annum or at such lesser rate as may be determined by the Board of Directors. The Board of Directors of the Association may suspend the voting rights of the Lot Owner and right to use the Common Property (other than portions thereof required to provide access to such Owner's Lot) during the period in which any assessment or portion thereof remains unpaid and may bring an action at law against the Lot Owner or Owners personally obligated to pay the same or foreclose its lien against such Owner's Lot, in which event late charges, interest, costs and attorney's fees in an amount equal to the greater of \$250.00 or fifteen (15%) percent of the past-due amount plus interest due thereon, may be added to the amount of such assessment or portion thereof which is past due. All payments on account shall be applied first to late charges, then interest, and then to the assessment lien first due. All late charges and interest collected shall be credited to the common expense fund. Each Lot Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien against his Lot in the same manner as other liens for the improvement of real property. The lien provided for in this Article IV shall be in favor of the Association and shall be for the benefit of all Lot Owners. Any legal action brought by the Association to enforce such lien against such Lot shall be commenced within five (5) years from the time the assessment, or portion thereof, became due. Failure to bring such an action within such time shall cause the lien to be extinguished as to such assessment, or portion thereof, more than five (5) years past due, but shall not bar an action by the Association against the Unit Owner(s) obligated to pay the same in accordance with the provisions hereof. The Association shall have the power to bid on the Lot at any judicial or foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property and facilities located thereon or abandonment of his Lot.

Section 9. Priority of Lien. The lien of the assessments provided for in this Article IV shall be prior and superior to all other liens except only (a) ad valorem taxes and (b) all sums unpaid on a first mortgage, on the Lot, if any. The sale or transfer of any Lot which is subject to a first mortgage pursuant to the judicial sale or foreclosure thereof, or pursuant to any proceeding in lieu of foreclosure, shall extinguish the lien of such assessments as to the payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve the acquirer of title, and the successors-in-title and assigns thereof from liability for any assessment thereafter becoming due on the Lot or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein; (i) all properties dedicated to and accepted by any governmental authority; and (ii) the Common Property. However, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges and liens.

ARTICLE V

ADMINISTRATION

Section 1. Responsibility for Administration. The maintenance, repair, replacement and operation of the Common Property and facilities located thereon shall be the responsibility of the Association. Such administration shall be governed by this Declaration and the Articles of Incorporation and By-Laws of the Association, as amended from time to time. The powers and duties of the Association shall be those set forth in said documents, together with those reasonably implied to effect their respective purposes, and shall be exercised in the manner provided therein.

Section 2. Management Agreements. The Association's Board of Directors may enter into such professional management agreements as it may deem necessary or advisable for the administration and operation of the property subject to the Association's jurisdiction. Any professional management agreement, or any other contract providing for services by the Declarant, must provide that the same is terminable by either party for cause or payment of a termination fee on ninety (90) days' or less written notice; such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. All costs and expenses incident to the employment of a manager shall be common expenses of the Association payable from the common expense fund. Any such management agreement may provide that, during his tenure, the person with whom the Association contracts for such administration and operation (hereinafter sometimes referred to as the "manager") shall be authorized and responsible for exercising all powers and performing all duties of the Association, excepting only those powers and duties specifically and exclusively assigned or reserved to the officers, directors or members of the Association by this Declaration and the Association's Articles of Incorporation or By-Laws. The Board of Directors may require that such manager be bonded. Each Lot Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into as hereinabove provided.

Section 3. Limitation of Liability: Indemnification. Notwithstanding the duty of the Association to maintain, repair and replace the Common Property, the Association shall not be liable for injury or damage caused by any latent condition of such property and facilities; nor for injury or damage caused by the elements, its members or other persons, nor shall any officer or director of the Association be

liable to any of its members for injury or damage caused by such officer or director in the performance of his duties due to any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. Each officer or director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been such an officer or director, whether or not he is such an officer or director at the time such expenses and liabilities are incurred, except in such cases wherein the officer or director is adjudged guilty of willful misconduct or bad faith in the performance of his duties.

ARTICLE VI

RIGHTS OF THE ASSOCIATION

Section 1. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. If the Association enters into a management agreement, such agreement shall be subject to the provisions of Section 2 of Article V hereof. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property, and may, subject to the provisions of this Declaration, dispose of the same by sale or otherwise.

Section 3. Rules and Regulations. Reasonable rules and regulations concerning the use of the Common Property and facilities located thereon including but not limited to road easements, roadways, and rights-of-way, may be made and amended from time to time by the Board of Directors of the Association; provided that copies of such regulations and amendments thereto shall be furnished by the Association to all Lot Owners. Such regulations shall be binding upon the Lot Owners, their families, tenants, guests, invitees and agents, until and unless such regulation, rule or requirement be specifically overruled, cancelled or modified in a regular or special meeting by the vote of a majority of the total votes in the Association. Failure to abide by any such regulation, rule or requirement shall be grounds for an action to recover damages, or obtain injunctive and equitable relief or both.

ARTICLE VII

PROPERTY RIGHTS, EASEMENTS AND USE RESTRICTIONS

The real property which is now or hereafter made subject to this Declaration shall be and is hereby made subject to the property rights, easements and use restrictions set forth in Exhibit "E" attached hereto and by this reference made a part hereof.

ARTICLE VIII

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements constructed on the Common Property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in the maximum insurable amount to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors of the Association or its manager shall also obtain a public liability policy covering the Common Property and facilities thereon for the hazards of premises operation or actions arising out of bodily injury, property damage, false arrest, invasion of privacy and libel and slander caused by the negligence of the Association or any of its agents, which public liability policy shall be at least \$1,000,000.00 single limit as respects the hazards enumerated herein. Premiums for all such insurance shall be common expenses paid for by the Association. Such insurance shall be governed by the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Georgia and holding a Policyholder Rate of B+ or better.

(b) Exclusive authority to negotiate and accept settlement under policies hereafter in force on the Common Property shall be vested in the Association's Board of Directors.

(c) The Association's Board of Directors or its manager shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all insurable improvements constructed on the Common Property.

(d) The Association's Board of Directors or its manager 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 Association, its Board of Directors, its manager, or its members and their respective families, tenants, agents and guests, with respect to property coverage, except for arson

and fraud; (2) a waiver by the insurer of its right to repair or reconstruct instead of paying cash; (3) that the policies cannot be cancelled, invalidated or suspended on account of the conduct of any one or more members or on account of the conduct of any director, officer or employee of the Association or its manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its agent, mortgagee or any member.

Section 2. Insurance Trustee. All casualty insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to an insurance trustee, which shall be the Association, or a bank or other financial institution having trust powers with officers in Georgia, as may from time to time be approved by the Board of Directors of the Association, which insurance trustee is herein sometimes referred to as the "Depositary." In the event that the Association shall act as insurance trustee, then the provisions of this Declaration which by their context contemplate the "Depositary" as a party separate from the Association shall not apply.

Section 3. Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the Common Property and facilities, the Association's Board of Directors or its manager shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty. Subject to subsections (b) and (d) hereof, all such damage or destruction shall be repaired or reconstructed as soon as practicable after any such casualty shall occur.

(b) In the event such damage or destruction is not covered by insurance or the insurance proceeds paid to the Association are not sufficient to defray the cost of such repair or reconstruction, then, without a vote of the members of the Association, the Association's Board of Directors may levy a special assessment in a total amount of not more than \$500.00 to provide funds for such repair or reconstruction. In the event the aforementioned special assessment in the total amount of \$500.00 and the insurance proceeds paid to the Depositary, if any, are not sufficient to defray the cost of such repair or reconstruction, then subject to approval by the Association membership, as provided in Section 4 of Article IV hereof, the Association's Board of Directors may levy a special assessment of not more than the amount so approved by the membership to provide funds for such repair or reconstruction. Unless the estimated cost to repair or reconstruct is \$5,000.00 or less, the proceeds from insurance and special assessments, if any, shall be deposited with the Depositary and disbursed as hereinafter provided.

(c) In the event that the insurance proceeds and assessments, if any, paid to the Depository are in excess of the Depository's expenses and cost of repair or reconstruction, such excess shall be disbursed to the Association as hereinafter provided.

(d) Any such damage or destruction to the Common Property and facilities shall be repaired or reconstructed unless a special assessment requiring Association membership approval shall be required and the members of the Association shall fail to approve the same within sixty (60) days after the casualty, in which event the damaged or destroyed area or areas shall not be repaired or reconstructed, but rather shall be cleaned up and maintained in a neat and attractive condition. If, for any reason, the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction are not made available to the Association within thirty (30) days after the casualty, then said sixty (60) day period shall be extended correspondingly until such information shall be made available to the Association. In all cases, the Depository may rely upon a certificate signed by the President and Secretary of the Association, to determine whether damage or destruction is to be repaired or reconstructed.

Section 4. Disbursement of Proceeds.

(a) If the damage or destruction is not to be repaired, then, after paying or making provision for the expenses of the Depository, the net proceeds of any insurance paid to the Depository shall be disbursed to the Association to pay for the cost of cleaning up the Common Property and for such other purposes as the Board of Directors of the Association shall determine.

(b) If the damage or destruction for which the insurance proceeds are paid to the Depository is to be repaired or reconstructed, then, after paying or making provision for the expenses of the Depository, the remaining proceeds shall be disbursed to defray the cost of such repairs or reconstruction as herein provided. Any proceeds remaining after defraying such costs shall be disbursed to the Association for such purposes as the Board of Directors of the Association shall determine.

(i) Minor Damage. If the amount of the estimated cost of reconstruction and repair is \$5,000.00 or less, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon written request to the Depository by the holder of any mortgage affecting that portion of the Common Property being repaired or reconstructed, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage. Under the latter circumstances, any special assessments collected by the Association for repair or reconstruction shall also be deposited with the Depository and disbursed in the same manner.

(ii) Major Damage. If the amount of the estimated cost of reconstruction and repair is more than \$5,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of a registered architect or licensed professional engineer selected and employed by the Board of Directors of the Association to supervise the work, or upon approval of a builder selected and employed by the Board of Directors of the Association to supervise or perform the work provided such builder is approved by the holder of any mortgage affecting that portion of the Common Property being repaired or reconstructed.

(iii) Certificate. Notwithstanding the provisions herein, the Depositary shall not be required to determine whether or not sums paid by Lot Owners upon assessment shall be deposited by the Association with the Depositary, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of any third party, nor whether a disbursement is to be made from the construction fund, nor to determine any other fact or matter relating to its duties hereunder. Instead, the Depositary may rely upon a certificate of the Association made by its President and Secretary or manager, if any, as to any or all of such matters and stating the name of the payee and the amount to be paid; provided that when the holder of any mortgage encumbering that portion of the Common Property which is being repaired or reconstructed shall specifically request the Depositary to do so in writing, the approval of a registered architect, licensed professional engineer or approved builder shall be first obtained by the Association.

ARTICLE IX

CONDEMNATION

Section 1. General. Whenever any part of the Common Property shall be taken by any authority having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association and unless otherwise provided by law at the time of such taking, any award made therefor shall be deposited by the Association with the Depositary and disbursed as hereinafter provided.

Section 2. Disbursement of Award. 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 majority of the members of the Association, 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 funds are available therefore in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article VIII hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any

improvements on the Common Property, or if there is a decision made not to repair or restore, or if replacement is completed, then, subject to the consent of the holders of any mortgages encumbering all or any portion of the Common Property so taken, such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine. With respect to the disbursement of funds under this Section, the provisions of Article VIII hereof shall apply so far as the same may appertain and the Depository shall be entitled to rely upon the certificate of the Association as provided in Section 4 of said Article VIII hereof.

ARTICLE X

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation Without Approval of Association.

(a) As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time and at any time until the Class B membership in the Association shall terminate and cease to exist to subject all or any of the real property described in Exhibit "C" attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Office of the Clerk of the Superior Court of the County in which the additional property is located a deed of conveyance or supplementary declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such deed of conveyance or supplementary declaration unless otherwise provided therein.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not, and shall not be implied or construed, so as to impose any obligation upon Declarant to subject all or any part of such additional land to this Declaration or to the jurisdiction of the Association, nor shall such rights impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Annexation With Approval of Association. Subject to the consent of the owner thereof, upon the affirmative vote of a majority of the total votes of the Association present or represented by proxy at a meeting duly called for such purpose and the Class B member so long as such membership class shall exist, the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the offices of the Clerk of the Superior Court of Gilmer County a supplementary declaration in respect to

the property being annexed. Any such supplementary declaration shall be signed by the President and Secretary of the Association and any such annexation shall be effective upon the filing for record of such supplementary declaration unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Association called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Association.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. Each Lot Owner shall comply strictly with the By-Laws and rules and regulations of the Association, as any of the same may be amended from time to time, and with the covenants and restrictions set forth in this Declaration. In the event of a violation or breach, or threatened violation or breach, of any of the same, Declarant, the Association or any aggrieved Lot Owner, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. In addition to all other remedies, Declarant or the Association, or any duly authorized agent of either of them, shall have the right to enter upon any portion of the Common Property where a violation exists and summarily abate or remove, at the expense of the violating Lot Owner, and using such force as may be reasonably necessary, any erection, thing or condition that may be or exist contrary to the intent and meaning of the provisions hereof, if after ten (10) days' written notice of such violation it shall have not been corrected by such Lot Owner. Neither Declarant nor the Association, nor their agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Such notice may be given in person or in the manner provided for notices in the By-Laws of the Association. Should the Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Lot Owner. Inasmuch as the enforcement of the provisions of this Declaration and the By-Laws and such rules and regulations is essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Lot Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Lot Owner, in addition to an action for damages and all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. Further, in any case of flagrant or repeated violation by a Lot Owner, then, in addition to the foregoing remedies, the Board of Directors of the Association may levy summary charges against the Lot Owner for such violation, provided that no summary charges may be levied for more than \$25.00 for any one

violation; but each day or time a violation is continued or repeated after written notice is given to the Lot Owner to cease and desist, it shall be considered a separate violation. Collection of summary charges may be enforced against a Lot Owner as if such charges were a common expense owed by the Lot Owner involved. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Lot Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence therein nor shall be deemed to be a waiver of the right to exercise such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its exercise or enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach of the provisions of this Declaration, or the By-Laws, or such rules and regulation, however long continued, or for imposing provisions which may be unenforceable.

Section 2. Rights of Third Parties. This Declaration shall be recorded in the public real estate records of the Clerk of the Superior Court of Gilmer County and shall inure to the benefit of Declarant, the Association, the Lot Owners, their respective heirs, legal representatives, successors-in-title, successors and assigns; and by such recording no owner of property not located within the Development shall have any right, title or interest whatsoever in the Development or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of the Class B member and mortgagees as herein provided, the Lot Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any such Owner.

Section 3. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law and such provisions may be renewed or extended in whole or in part beyond the initial period permitted by such law for successive periods not to exceed the period permitted by such law provided such renewal or extension is approved (i) by at least a majority of the total votes of the Association present, or represented by proxy, and (ii) by the Class B member of the Association, so long as such membership shall exist. The time within which and the manner in which notice of any such meeting shall be given to said members, and the quorum required for the transaction of business at any such meeting shall be as specified in the By-Laws of the Association. Further, no such renewal or extension shall be effective unless there is filed for record in the Office of Clerk of the Superior Court of Gilmer County, on or before the effective date thereof, an

instrument executed by the President and Secretary of the Association which shall contain a certification by such Secretary that such extension and renewal was duly approved by the members of the Association and by the Class B member, if the Class B membership shall then exist. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration, provided any such amendment shall not adversely affect the title to any Owner's Lot or materially alter or change any Lot Owner's right to the use and enjoyment of the Common Property as set forth herein unless any such Lot Owner shall consent thereto in writing. Further, this Declaration may be amended by the Association at any time and from time to time during said first period, and at any time and from time to time during the period of any extension and renewal thereof. Any such amendment shall require the approval (i) of at least two-thirds (2/3) of voting membership of the Association, and (ii) by the Class B member of the Association, so long as such membership shall exist. The time within which and the manner in which notice of any such meeting shall be given to said members, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Association. Further, no amendment by the Association shall be effective unless there is filed for record in the Office of the Clerk of the Superior Court of Gilmer County, on or before the effective date thereof, an instrument executed by the President and Secretary of the Association which shall state the terms of such amendment and which shall contain a certification by such Secretary that such amendment was duly approved by the membership of the Association and by the Class B member, if the Class B membership shall then exist. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

Section 5. Partition. The Common Property shall remain undivided and no Lot Owner nor any other person shall bring any action for partition or division of the whole or any part thereof without the written consent of all owners of all portions of the property located within the Development and without the written consent of all holders of all mortgages encumbering any portion of the property, including but not necessarily limited to the Lots, located within the Development.

Section 6. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

Section 7. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 8. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 9. Captions. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument under seal as of the 21st day of February, 1987.

SIGNED, sealed and delivered this the 21st day of February, 1987, in the presence of:

W. H. McDonald
Unofficial Witness

DECLARANT:
United Properties Incorporated,
a Georgia corporation

By: Wayne R. Keece
Wayne Keece, President

Wayne R. Keece
NOTARY PUBLIC
Exp. - 3/26/91

(Corporate Seal)

EXHIBIT "A"

Declaration of Covenants, Conditions, Restrictions and Easements
for Big Creek Mountain, a private community.

Definitions

The following words when used in this Declaration or in any supplemental declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Architectural Control Committee" shall mean, as follows: So long as Declarant shall own one or more Lots in the Development, the Architectural Control Committee shall mean Declarant, or one or more persons appointed by Declarant to perform the functions of the Architectural Control Committee. After Declarant shall cease to own any Lots in the Development, the Architectural Control Committee shall mean the Board of Directors of the Association, or one or more persons appointed by the Board of Directors of the Association to perform the functions of the Architectural Control Committee. Persons appointed to the Architectural Control Committee need not be Lot Owners and persons appointed by Declarant or the Board of Directors of the Association shall serve at the pleasure of the Declarant or the Board of Directors of the Association, as the case may be.

(b) "Declarant" shall mean and refer to (i) United Properties Incorporated, a Georgia corporation, or (ii) any successor-in-title of said corporation to all or some portion of the property then subjected to this Declaration, provided in the instrument of conveyance to any such successor-in-title, such successor-in-title is expressly designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance.

(c) "Association" shall mean and refer to the Big Creek Mountain Community Association, Inc., a non-profit Georgia corporation, its successors and assigns.

(d) "Common Property" shall mean all real and personal property or any interest therein, together with the facilities and improvements located thereon, now or hereafter owned by the Declarant or Association and so designated by Declarant for the common use and enjoyment of the Lot Owners, together with any rights, easements, rights-of-way, or roadways reserved to Declarant or used or useful in connection with operation or enjoyment of the Development.

(e) "Development" shall mean and refer to that certain real property described in Exhibit "B" attached hereto and (i) such additions

thereto as may be made by Declarant by supplementary declarations of all or any portion of the real property described in Exhibit "C" attached hereto, and (ii) such additions thereto as may be made by the Association by supplementary declaration of other real property.

(f) "Lot" shall mean and refer to any plot of land comprising a single dwelling site designated on a plat of survey recorded in the office of the Clerk of the Superior Court of Gilmer County, which is subjected to this Declaration as herein provided.

(g) "Mortgage" shall mean any mortgage, deed to secure debt, security deed and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(h) "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot located in the Development, excluding, however, any person holding such interest merely as security for the performance or satisfaction of an obligation.

(i) "Person" shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trustee or other legal entity.

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 111 of the 6th District of Gilmer County, Georgia, being 98.08 acres, more or less, and being more particularly described as follows:

BEGINNING at an iron pin located at the original Northwest corner of the aforesaid Land Lot 111; thence running with the original North line of Land Lot 111, South 89 degrees 51 minutes 32 seconds East a distance of 1,724 feet, more or less, to a point located in the centerline of a creek; thence running in a generally Southerly direction along and with the centerline of the aforesaid creek to a point located where said creek intersects the South land lot line of Land Lot 111; thence running with the South land lot line of Land Lot 111, North 88 degrees 29 minutes 57 seconds West a distance of 1,555.31 feet to an iron pin in a rock pile located at the original Southwest corner of Land Lot 111; thence running with the original West line of Land Lot 111, North 01 degree 30 minutes 12 seconds East a distance of 2,661.81 feet to an iron pin, which iron pin is the POINT OF BEGINNING.

The above-described property being a portion of that property shown on plat of survey prepared for Frank E. Pettit by Lane S. Bishop, Georgia Registered Land Surveyor, dated June 16, 1981, as recorded in Plat Book 9, page 268, Gilmer County, Georgia Records, being all of the property lying West of the centerline of the creek, as depicted on the aforesaid survey.

EXHIBIT B

Declaration of Covenants, Conditions, Restrictions and Easements
for Big Creek Mountain, a private community.

PROPERTY HEREBY SUBJECTED TO THIS DECLARATION

All that tract or parcel of land lying and being in Land Lot 111
of the 6th District, 2nd Section of Gilmer County, Georgia, being lots 1
- 24 of Big Creek Mountain, a private community, as shown on plat of
survey dated October 7, 1987, prepared by Lane S. Bishop, Georgia
Registered Land Surveyor No. 1575, as recorded in Plat Book 16, Pages
141-144 in the Real Estate Records with the Clerk of the Superior Court
of Gilmer County, Georgia.

EXHIBIT "C"

Declaration of Covenants, Conditions, Restrictions and Easements
for Big Creek Mountain, a private community.

OPTION PROPERTY

All that tract or parcel of land lying and being in Land Lot 111
of the 6th District of Gilmer County, Georgia, being 98.08 acres, more or
less, and being more particularly described as follows:

BEGINNING at an iron pin located at the original Northwest
corner of the aforesaid Land Lot 111; thence running with the original
North line of Land Lot 111, South 89 degrees 51 minutes 32 seconds East a
distance of 1, 724 feet, more or less, to a point located in the
centerline of a creek; thence running in a generally Southerly direction
along and with the centerline of the aforesaid creek to a point located
where said creek intersects the South land lot line of Land Lot 111;
thence running with the South land lot line of Land Lot 111, North 88
degrees 29 minutes 57 seconds West a distance of 1,555.31 feet to an iron
pin in a rock pile located at the original Southwest corner of Land Lot
111; thence running with the original West line of Land Lot 111, North 01
degree 30 minutes 12 seconds East a distance of 2,661.81 feet to an iron
pin, which iron pin is the POINT OF BEGINNING.

The above-described property being a portion of that property
shown on plat of survey prepared for Frank E. Pettit by Lane S. Bishop,
Georgia Registered Land Surveyor, dated June 16, 1981, as recorded in
Plat Book 9, page 268, Gilmer County, Georgia Records, being all of the
property lying West of the centerline of the creek, as depicted on the
aforesaid survey.

LESS AND EXCEPT that real property, as described and set forth
on Exhibit "B" of this Declaration of Covenants, Conditions, Restrictions
and Easements for Big Creek Mountain, a private community.

EXHIBIT "D"

Declaration of Covenants, Conditions,
Restrictions and Easements for Big Creek Mountain, a private community

NOTICE OF LIEN

STATE OF GEORGIA:

COUNTY OF _____:

PURSUANT TO the provisions of Article IV of that certain Declaration of Covenants, Conditions, Restrictions and Easements for BIG CREEK MOUNTAIN, a private community recorded in Deed Book _____, Beginning at Page _____, Gilmer County, Georgia Records, the BIG CREEK MOUNTAIN COMMUNITY ASSOCIATION, INC. claims a lien against the following-described property of _____, to-wit:

All that certain tract or parcel of land lying and being in Land Lot 111 of the 6th District, 2nd Section, of Gilmer County, Georgia, being known as Lot _____ of Burnt Mountain, a private community, according to a plat of subdivision recorded in Plat Book _____, Beginning at Page _____, Gilmer County, Records.

THIS claim of lien is for unpaid and delinquent assessments in the amount of \$ _____, which, under and pursuant to the provisions of said Declaration, are past due as of the date hereof, together with interest thereon, late charges and costs of collection, including attorney's fees, as provided in said Declaration. In accordance with the provisions of said Declaration, this claim of lien is filed within five (5) years after said assessment became due. Also, this claim of lien is to secure any and all assessments, together with interest thereon, late charges and costs of collection, including attorney's fees, which may hereafter come due to the BIG CREEK MOUNTAIN COMMUNITY ASSOCIATION, INC. in respect to the above-described property until this claim of lien is cancelled of record.

THIS _____ day of _____, 19__.

BIG CREEK MOUNTAIN COMMUNITY
ASSOCIATION, INC.

BY: _____

EXHIBIT "E"

Declaration of Covenants, Conditions,
Restriction and Easements for Big Creek Mountain, a private community

The following property rights, easements and use restrictions shall apply to the property which is now or hereinafter subjected to this Declaration.

Section 1. 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 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.

Notwithstanding any other provision hereof to the contrary, Declarant reserves the right to use all roadways, easements, and rights-of-way within the Development for purposes of access, ingress and egress to other property now owned or hereafter acquired by Declarant, and further, specifically reserves the right to convey and grant to purchasers of other property from Declarant whether within this Development or otherwise, similar perpetual, non-exclusive rights to use the rights-of-ways and roadways reserved herein on such conditions as Declarant shall deem appropriate.

Section 2. Access to Common Property. The Association shall have an easement of access, ingress and egress over the Lots subjected to this Declaration as shall be reasonably necessary to permit the access, ingress and egress to and from portions of the Common Property of persons and equipment employed or used by the Association in the performance of

its duties hereunder. This easement shall be exercised in such a manner as not to materially interfere with the use, occupancy or enjoyment of the property servient to this easement.

Section 3. Use and Enjoyment. Every Owner of a Lot within the Development shall have a non-exclusive right and easement of use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(a) 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);

(b) the right of the Association to suspend the voting rights and right to use the Common Property by a Lot Owner for any period during which any assessment against his Lot which is herein provided for remains unpaid; and, for a reasonable period of time for infraction of the Association's published rules and regulations, subject to the Lot Owner's right of ingress and egress to his Lot;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for constructing, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interest, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant of any Lot Owner encumbering any Lot or other property located within the Development. 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 abrogate, diminish, modify, change, alter, rescind, cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Development;

(d) the right of the Association to dedicate or transfer all or any portion of the Common Property to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by a majority vote of the Association in accordance with the provisions of Article II hereof.

Section 4. Delegation of Use. Any Lot Owner may delegate, in accordance with the By-Laws and rules and regulations of the Association, his right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests.

Section 5. Use of Common Property. The use and enjoyment of the Common Property by the Lot Owners, their families, tenants, visitors, guests, servants and agents, shall be subject to such reasonable rules and regulations as may be made and amended from time to time by the Board of Directors of the Association; provided that copies of such rules and regulations shall be furnished by the Association to all Lot Owners. The authority to make such rules and regulations shall include, but shall not be limited to, the right to limit the type and size of vehicles using the private roads within the Development, the maximum and minimum speeds of vehicles using said roads, use of barriers, gates, or barricades to redirect traffic along certain roadways or to control or limit access, all other necessary traffic and parking regulations and the maximum noise levels of vehicles using said roads. Such rules and regulations shall be binding upon the Lot Owners, their families, tenants, guests, invitees and agents, until and unless such rule, regulation, or requirement be specifically overruled, cancelled or modified in a regular or special meeting by a majority vote of the Association and by the vote of the Class B member so long as such membership shall exist.

Section 6. Utilities, etc. Declarant, as to any Lot owned by Declarant, and the Association, upon a majority vote of its Board of Directors, as to the Common Property, are hereby authorized and empowered to grant such licenses and easements as either of them shall deem necessary and appropriate upon, across, above and under any such Lot or the Common Property, as the case may be, for access, ingress, egress, installation, repairing, replacing and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system or security system which the Association might decide to have installed to serve the Development. It shall be expressly permissible for the Declarant or the Association, as the case may be, to install, repair, replace and maintain or to authorize the installation, repairing, replacing and maintaining of such poles, wires, conduits, cables or 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, Declarant, or the Association, as the case may be, shall have the right to execute and deliver such written document and every grantee of any interest in any property located within the Development consents thereto and further hereby agrees to give his specific written consent thereto in recordable form if requested by Declarant or the Board of Directors of the Association. Any license or easement granted pursuant hereto by the Declarant or the Association shall be and remain in full force and effect perpetually or for such shorter period of time as may be specified in the particular instrument creating the same. Further, each Lot or any Common Property now or hereafter subjected to this Declaration shall also be subject to those easements, if any, shown or set forth on any recorded plat thereof. In addition thereto and not by way of limitation, there is hereby reserved along the perimeter boundary line of each Lot a perpetual, non-exclusive right-of-way and easement Twenty (20) feet in width, the centerline of which shall be the perimeter boundary line of each lot, for the purposes of access, ingress and egress, utility installation and maintenance, as well as storm water drainage and runoff.

Section 7. Water Service. Each Lot Owner shall independently provide for water service to their individual Lot. In the event Declarant constructs a water system and makes water service available to the property within the Development, a Lot Owner may obtain use of such water system for a Lot for a tap-on fee payable to Declarant in the amount of \$250.00. In no event shall the Association or the Declarant be deemed responsible for or required to provide any water service to any part of the Property subject to this Declaration.

Section 8. Residential Use. All Lots shall be used for residential purposes exclusively. No business or business activity shall be carried on upon any Lot at any time; provided, however, that nothing herein shall prevent Declarant and Declarant's subsidiaries, affiliates and employees from using any Lot owned or leased by Declarant for the purpose of carrying on business related to the development, sale and rental of property in said Development; provided, further, private offices may be maintained in residences located on any of the Lots so long as such use is incidental to the primary residential use of the Lot and is approved by the Board of Directors of the Association.

Section 9. Sale and Leasing of Lots. The right of any Lot Owner, including Declarant, to sell, transfer or convey any Lot, including the residence located thereon, owned by such Owner, shall not be subject to any right of first refusal or similar restriction in favor of the Association or other Lot Owners. No Lot Owner shall have the right to lease or rent any Lot, including the residence located thereon, owned by such Owner without first obtaining the approval of the Association Board of Directors. Any lease agreement between a Lot Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the terms and provisions of the By-Laws and rules and regulations of the Association, and this Declaration, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing and a copy thereof filed with the Association Board of

Directors. Other than the foregoing, there shall be no restriction of the right of any Lot Owner to lease his lot.

Section 10. Subdivision of Lots. No Lot shall be subdivided without the prior express approval of the Board of Directors of the Association, and no Lot may be subdivided if as a result of such subdivision any Lot would be created which would contain less than one (1) acre. The boundary lines of a lot shall not be changed, except with the prior written approval of the Architectural Control Committee and by Declarant, so long as Declarant shall own any lot in the Development. Declarant, however, hereby expressly reserves the right to revise the boundary lines of any Lots owned by Declarant as may be reasonably necessary to make the Lot or Lots affected thereby suitable as a building site or sites.

Section 11. Architectural Control. To preserve the architectural appearance of the Development, after the purchase of any Lot from Declarant, or from and after the date the Lot is subjected to this Declaration, if at that time the same is owned by a person other than Declarant (the "Effective Date"), no house or other building, fence, wall, road, driveway, parking area, tennis court, swimming pool, or other structure or improvement of any kind shall be commenced, constructed, erected, placed, maintained, altered, changed, added to, modified or reconstructed on any Lot, nor shall any exterior addition to, or alteration, change or modification to an existing structure or improvement, or the color thereof, including without limitation, patio covers and antennas, be constructed, erected, placed, or maintained on any Lot, until the plans and specifications therefor, showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee. "Improvement" shall mean and include any improvement, change, alteration or modification of the appearance of a Lot from the the state existing on the Effective Date. Before taking any action requiring approval under this Section, and before making any application to any lender for a loan to finance such construction, a Lot Owner shall submit to the Architectural Control Committee, a construction schedule and two complete sets of plans and specifications showing the nature, kind, shape, height, materials, color and location of the proposed improvements, as well as, where applicable, a site plan, landscape layout, floor plans, exterior elevations and exterior materials, colors and finishes. No changes or deviations in or from such plans and specifications as approved shall be made without the prior written approval of the Architectural Control Committee. No alteration, change or modification in the exterior appearance of any building, structure or other improvement shall be made without like approval by the Architectural Control Committee. Further, all construction must be performed by Allied Construction Corporation, a Georgia corporation, or its designees. All such plans and

specifications shall be submitted in writing over the signature of the owner of the Lot or such Owner's authorized agent. Such plans and specifications shall be considered as submitted to the Architectural Control Committee when personally delivered to any individual who is then a member of the Architectural Control Committee or to the individual who is then a member of the Architectural Control Committee or to the individual who is then the President of the Association (irrespective of whether such President is then a member of such Committee) and in which event it shall be the responsibility of such President to deliver such plans and specifications to the Architectural Control Committee. Approval shall be based, among other things, on adequacy of site dimensions; conformity and harmony of external design with proposed or existing neighboring structures or improvements; affect of location and use of improvements on neighboring property, improvements, operations and uses; relation to topography, grade and finished ground elevation of the Lot to that of neighboring property; proper facing of aesthetic beauty; and conformity of the plans and specifications to the purposes and general plan and intent of this Declaration. In any event, the Architectural Control Committee shall have the right to require any Lot Owner to remove or alter any improvement which has not received approval or is built or installed other than in accordance with the plans and specifications approved by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove in writing plans or specifications within thirty (30) days after such information has been submitted in the manner aforesaid, approval shall not be required and this Section will be deemed to have been complied with. Neither Declarant, nor any member of the Architectural Control Committee shall be responsible or liable in any way for the performance or lack thereof of the builder, or for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any defects in any work done according to any plans and specifications approved by the Architectural Control Committee, or in respect to which the Architectural Control Committee failed to take any action regarding approval or disapproval. Further, neither Declarant, nor any member of the Board of Directors of the Association, nor any member of the Architectural Control Committee shall be liable in damages to anyone submitting plans or specifications for approval under this Section, or to any owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Declarant, or any member of the Architectural Control Committee, to recover for any such damage.

Section 12. Building Location. Since the establishment of inflexible building setback lines for locating houses or other structures tends to force construction of building both directly behind and directly to the side of other homes or buildings, with detrimental effect on privacy, views, preservation of important trees, etc., no specific setback lines are established by these covenants and restrictions other than those which may be required by applicable governmental rules and regulations and those which may be shown on recorded plats which shall be observed. The Architectural Control Committee shall have the right to control solely and absolutely the precise site and location of any proposed house, dwelling, building, or other structure or improvement upon all Lots. Such location shall be determined, however, only after reasonable opportunity is afforded the Lot Owner to request a specific site.

Section 13. Trees. No living trees with a diameter of six inches (6") or greater shall be removed from a Lot without the prior approval of such removal by Allied Construction Corporation, a Georgia corporation, or the Association.

Section 14. Other Building Requirements. The requirements set forth below are in no way to be construed as limiting the exercise of the Architectural Control Committee's discretion pursuant to Section 11, and, the Board of Directors may grant variances from the requirements in specific cases where a literal application would impose unnecessary hardship or on a uniform basis to certain designated portions of the Development.

(a) Each residence and other structures shall be constructed only of materials approved in writing by the Architectural Control Committee. All exteriors shall be natural log or natural wood products, exclusive of pressed wood. No exposed brick (except as may be used in chimneys), concrete block or poured concrete shall be permitted. Notwithstanding the foregoing, the use of stucco materials on exteriors shall be specifically permitted.

(b) Driveways shall be constructed only of materials approved in writing by the Architectural Control Committee.

(c) The exterior of all residences and other structures must be completed within one (1) year after commencement of construction, except where, in the sole discretion of the Architectural Control Committee such completion within one (1) year is not possible or would result in great hardship to the Owner or builder due to strike, fire, national emergency or natural calamity.

(d) No exterior pole, tower, antenna or other device for the transmission or reception of television signals, radio signals or any other form of electromagnetic radiation, or for any other purpose, shall

be erected, placed or maintained on any Lot except as may be constructed by the Declarant or approved in writing by the Architectural Control Committee. Further, the design, type, location, size, color and intensity of all exterior lights shall be subject to control by the Architectural Control Committee and only such exterior lighting as shall have been approved in writing by the Architectural Control Committee shall be installed or used on any Lot.

(e) All clothes lines, garbage cans, wood piles, etc., shall be located or screened so as to be concealed from view of neighboring Lots and streets. All rubbish, trash, and garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

(f) No heating, air conditioning or other mechanical equipment, and no fuel or water tanks or similar storage receptacles may be exposed to view. Such equipment and receptacles may be installed only within the main dwelling, within an accessory building, buried underground, or otherwise located or screened so as to be concealed from view of neighboring Lots and streets.

(g) Each residence shall contain a minimum of 845 square feet of heated floor space, excluding porch and deck areas.

(h) No structure of a temporary character shall be placed upon any Lot at any time, except for shelters used by a building contractor during the course of construction. Such temporary shelters may not, at any time, be used as residences, nor be permitted to remain on the Lot after completion of construction.

(i) No accessory building shall be placed, erected or maintained upon any part of any Lot except in connection with a residence already constructed or under construction at the time that such outbuilding is placed or erected upon that Lot.

(j) No mobile home, house trailer, trailer (other than a boat trailer), tent, shack, barn, or other outbuilding or structure (except accessory buildings permitted under Section (h)) shall be placed on any lot at any time, either temporarily or permanently; provided, however, house trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period of residences or as one or more real estate sales offices of Declarant for the sale of property.

(k) Fences may be built on any Lot, subject to the approval of the Architectural Control Committee, provided that: (i) a fence must be of natural wood materials and kept in a natural wood finish or painted white, and (ii) any portion of a fence (or any portion of any building) fronting along a public or private road must be at a minimum set-back distance of ten (10) feet from the right-of-way of such road.

Section 15. Other Lots. Elsewhere in this Declaration, Declarant has reserved the right, exercisable from time to time, to subject by supplementary declaration other Lots to the provisions of this Declaration. Any residences constructed on any of such other Lots which are so subjected to this Declaration shall be comparable in style, floor plan, size and quality to the residences constructed on the Lots which are initially made subject to this Declaration, subject to the right of the Board of Directors to grant variances from the provisions.

Section 16. Required Maintenance. All Lots, together with the exterior of all improvements located thereon, shall be maintained in a neat, attractive and safe condition by their respective owners. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, grass, walks and other exterior improvements. The Association or the Declarant may, after thirty (30) days' notice to an owner, enter upon his Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, for removing garbage or trash, or for performing such exterior maintenance as the Association or the Declarant, in the exercise of either of their discretion, deems necessary or advisable. Such Lot Owner shall be personally liable to the Association for the direct and indirect cost of such maintenance, and the liability for such cost shall be a permanent charge and lien upon such Lot enforceable by the Association in the same manner as other liens for the improvement of real property or by any other appropriate proceeding in law or in equity. Although notice given as herein provided shall be sufficient to give the Association the right to enter upon such Lot and perform such maintenance, entry for such purpose shall be only between the hours of 9:00 A.M. and 5:00 P.M. on any day except Sunday, and such entrance shall not be construed, however, as an obligation on the part of the Association to mow, clear, cut or prune any Lot, to provide garbage or trash removal service, or to perform such exterior maintenance.

Section 17. No Trespass, or Breach. Whenever the Declarant, the Architectural Control Committee or the Association is permitted by these covenants and restrictions to take any action on the property of any Lot Owner, entering the property and taking such action shall not be deemed to be a trespass or a breach of these covenants and restrictions.

Section 18. Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets in reasonable number, provided that said pets are not kept, bred or maintained for any commercial purpose, and, in the sole discretion of the Board of Directors of the Association, do not endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the owners of other Lots. Dogs which are household pets shall at all times be under the strict control of the owner thereof. No structure for the care, housing, or confinement of any pets shall be maintained so as to be visible from neighboring property. Anything contained herein to the

contrary notwithstanding, a Lot Owner may be permitted to keep one (1) horse for every ten (10) contiguous acres owned, provided that said horse or horses does not, in the sole discretion of the Board of Directors of the Association, constitute a nuisance or inconvenience to the Owners of other Lots.

Section 19. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any property within the Development.

Section 20. Nuisances. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition of buildings or grounds on his Lot or Lots, irrespective of whether the same is occupied or vacant. No Lot shall be used in whole or in part for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which shall constitute a nuisance to the neighborhood. There shall not be maintained any plants or animals, or devise or thing of any sort, whose activities or existence, is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the Owners thereof.

Section 21. Mobile Homes, etc. Motorhomes, truck campers and boat trailers may be kept or parked on a Lot only if the same shall be kept or parked in such a manner as to be concealed from view of neighboring Lots and streets.

Section 22. Vehicles prohibited. No motorcycles, dune buggies, or other vehicles which emit loud noises, shall be permitted on any Lot or on the Common Property.

Section 23. Mail Boxes and Property Identification Markers. Declarant reserves to the Architectural Control Committee the right to approve the location, color, size, design, lettering and all other particulars of mail and newspaper boxes, if any, and of name signs for such boxes, as well as property identification markers.

Section 24. Signs. No signs, including, but not limited to, "for rent" or "for sale" signs or advertising posters of any kind, shall be erected, placed or maintained on any Lot, except only such signs as are approved by the Architectural Control Committee. The foregoing:

provisions of this Section to the contrary notwithstanding, nothing herein shall be construed to prevent Declarant from erecting, placing or maintaining upon any Lot, or permitting the erection, placing or maintaining upon any Lot by builders of residences, such signs as Declarant may deem necessary or desirable for the rental or sale of the Lots and/or residences constructed thereon. Also, the provisions of this Section shall not apply to anyone who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage or as transferee pursuant to any proceeding in lieu thereof.

Section 25. No Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of any other Owner or Owners.

Section 26. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Development shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 27. Construction of Declarant. Nothing in this Declaration shall limit the right of Declarant in the development of the property which is subjected to this Declaration to complete such construction and make such improvements to such property as Declarant shall deem advisable prior to the sale thereof by Declarant.

Section 28. Business Offices, Models, etc. Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant and any builder (if other than Declarant) of residences upon the Lots to maintain and carry on, upon such portion of the property within the Development as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction (if not already constructed) and the sale or rental of such residences, including, but without limitation, construction yards, business offices, signs, model residences and sales or rental offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by Declarant or other builders specifically authorized and approved by Declarant as model residences and offices for the sale or rental of Lots and/or residences in the Development.

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