



## NOTICE REGARDING COVENANTS AND/OR RESTRICTIONS

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

RESTATED BY-LAWS  
OF  
BLACKBERRY MOUNTAIN ASSOCIATION, INC.  
A Non-Profit Georgia Corporation

ARTICLE I.  
GENERAL

Section 1. The Name: The name of the Corporation is BLACKBERRY MOUNTAIN ASSOCIATION, INC.

Section 2. The principal office of the Corporation is 25 Blackberry Mountain Drive, Ellijay, Georgia or at such other place as may be subsequently designated by the Board of Directors.

Section 3. Registered Agent: For the purpose of service of process, the Corporation shall designate a Registered Agent or Agents, which designation may be changed from time to time and his or their office shall be deemed an office of the Corporation for the purpose of service of process. Said Registered Agent shall be a resident of Gilmer County Georgia.

ARTICLE II.  
DIRECTORS

Section 1. Number and Term: The number of Directors shall be five, elected by the members at large. Directors must be members of the association in good standing.

Section 2. Election of Directors: Directors, other than the initial Directors, shall be elected by the owners of each of the parcels located in the Development Area.

Section 3. Vacancy and Replacement: If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum at a special meeting of Directors duly called for this purpose, shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred.

Section 4. Removal: Directors may be removed for cause by an affirmative vote of a majority of the Members.

Section 5. Powers: The property and business of the Corporation shall be managed by the Board of Directors, who may exercise all corporate powers not specifically prohibited by statute or the Articles of Incorporation (though this designation of powers in the Board of Directors shall not prevent the said Board of Directors from delegating whatever authority and powers they may lawfully delegate to a third party manager of the Association facilities who may be employed and/or designated by the Board of Directors). The said powers shall specifically include, but not be limited to the following:

A. To make and collect assessments for the operation of the Association and the carrying out of the Association's duties in the Development Area and establish the time within which payment; of same are due;

B. To use and expend the assessments collected to maintain, care for and preserve the Association's property and the obligations of the Association in the Development Area and the operation of the Association;

C. To purchase the necessary equipment and tools required in the maintenance, care and preservation referred to above;

D. To enter upon the property of the Parcel owners when necessary to carry out its duties with respect to such Parcels;

E. To insure and keep insured the Association property in the manner set forth in the Declaration, against loss from fire and to purchase such other insurance as the Board of Directors may deem advisable;

F. To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin to seek damages from the Association members for violations of these By-Laws and the terms and conditions of the Blackberry Mountain Declaration of Restrictions, Covenants and Conditions or the Blackberry Mountain Rules;

G. To enter into such contracts with such firms, persons or corporations for the maintenance, operation and preservation of the Association property;

H. To enter into and execute the instruments and documents referred to and provided for in the Fifth Article of the Articles of Incorporation of this Corporation, and such other instruments and documents as the Board of Directors may deem appropriate, which will be in the best interests of the Association, for the purpose of undertaking such duties as may be allowed to be delegated by law;

I. To contract, from time to time, with a third party for the management of the Association, and to delegate to such third party, as manager, such powers and duties of this Corporation and its Officers and Directors except such powers and duties which by law or the provisions of the Articles of Incorporation of this Corporation or the By-Lays of this Corporation are required to have the specific approval of the Board of this Corporation;

J. To enter into employment agreements with auditors, attorneys and such other persons as may be necessary for the orderly operation of the Association property and to pay compensation to said parties;

K. To make reasonable rules and regulations for the operation of the Association; and

L. All other powers, including the power to acquire real property or interests in real property, which may be necessary for the efficient operation of the Association and for the use and benefit of the members of the Association.

Section 6. Compensation: Neither Directors nor Officers shall receive compensation for their services as such.

#### Section 7. Meetings:

A. The Board of Directors shall hold monthly meetings on the third Saturday at 9:30 o'clock A.M. or on the third Friday at 4:30 o'clock P.M. All meetings of the Board shall be open to the Membership. The Secretary shall give notice of each meeting either by mail or email, at least seven days before the date of such meeting. Notice of meetings shall be provided to the membership at the same time and posted in the office, postal box area and on the website.

B. Special meetings shall be held whenever called by the President or a majority of the Board. The Secretary shall give notice of each special meeting either personally, by mail or email, at least seven days before the date of such meeting, but the Directors may waive notice of the calling of the meeting. Notice of called meetings shall be provided to the membership at the same time and posted in the office, postal box area and on the website.

C. A majority of the Board shall be necessary and sufficient at all meetings to constitute a quorum for the transaction of business, and the act of a majority present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at the meeting, the Directors then present may adjourn the meeting without notice other than announcement at the meeting until a quorum shall be present.

Section 8. Order of Business: The order of business at all meetings of the Board shall be as follows:

- A. Roll Call;
- B. Reading of Minutes of last meeting;
- C. Consideration of communications;
- D. Resignations and elections;
- E. Reports of Officers and employees;
- F. Reports of committees;
- G. Unfinished business;
- H. Original resolutions and new business;
- I. Adjournment.

Section 9. Financial Statement: The Board or the party employed for the management of the Association shall present, no less often than at the Annual Meeting, a full and complete statement of the business and condition of the Corporation, including a report of the operation expenses of the Corporation and the assessments paid by each Member.

### ARTICLE III. OFFICERS

Section 1. Executive Officers: The executive Officers of the Corporation shall be a President, Vice President, Secretary and Treasurer, all of whom shall be members of the Board and elected annually by the Board. Any two of said offices may be united in one person, except that the President shall not also be the Secretary or an Assistant Secretary of the Association.

Section 2. Subordinate Officers: The Board of Directors may appoint such other Officers and agents as they may deem necessary, who shall hold office at the pleasure of the Board of Directors, and have such authority and perform such duties as from time to time may be prescribed by the Board.

Section 3. Tenure of Officers, Removal: All Officers and agents shall be subject to removal, with or without cause, at any time by a majority vote of the entire Board of Directors. The Board may delegate powers of removal of subordinate Officers and agents to any officer.

Section 4. The President:

A. The President shall preside at all meetings of the Members and Directors; he shall see that all orders and resolutions of the Board and orders of the party employed for the management of the Association are carried into effect; he shall execute bonds, mortgages and other instruments requiring a seal, under the seal of the Corporation; the seal, when affixed, shall be attested by the signature of the Secretary;

B. He shall have general superintendence and direction of all the other Officers of the Corporation and shall see that their duties are performed properly;

C. He shall cause a report of the operations of the Association for each fiscal year to be submitted to the Directors whenever called for by them, and to the Members at the Annual Meeting, and from time to time shall report to the Board all matters within his knowledge which the interests of the Corporation may require to be brought to their notice; and

D. He shall be an ex-officio member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the President of a corporation.

Section 5. The Vice President: The Vice President shall be vested with all the powers, and required to perform all the duties, of the President in his absence, and such other duties as may be prescribed by the Board of Directors.

Section 6. The Secretary:

A. The Secretary shall keep or cause to be kept the minutes of the Members' and of the Board of Directors' meetings in one or more books provided for that purpose.

B. He shall see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law;

C. He shall be custodian of the corporate records and of the seal of the Corporation and shall see that the seal of the Corporation is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these By-Laws;

D. He shall keep a register of the post office address of each Member, which will be furnished to the Secretary by such Member; and

E. In general, he shall perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. The Treasurer:

A. The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation, in such depositories as may be designated by the Board of Directors;

B. He shall disburse or cause to be disbursed the funds of the Corporation as ordered by the Board or the party employed for the management of the Association taking proper vouchers for such disbursements, and shall render or cause to be rendered to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of the financial condition of the Corporation;

C. He may be required to give the Corporation a bond in a sum, and with one or more sureties, satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration to the Corporation, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the Corporation. The Corporation shall pay the premiums for issuance of said bond; and

D. He shall perform such other duties as from time to time maybe assigned to him by the President or the Board of Directors.

Section 8. Vacancies: If the office of the President, Vice President, Secretary or Treasurer becomes vacant by reason of death, resignation, disqualification, or otherwise, the remaining Directors by a majority vote of the entire Board of Directors, may choose a successor or successors who shall hold office for the unexpired term in respect to which such vacancy occurred.

Section 9. Resignations: Any Director or other Officer may resign his office at any time; such resignation to be made in writing, and to take effect from the time of its receipt by the Corporation, unless some time be fixed in the resignation, then from that date. The acceptance of a resignation shall not be required to make it effective.

Section 10. Powers and Duties of Officers: The powers and duties of the Officers of this Corporation will be subject to the fact that such powers and duties, or some of them, may be delegated to a third party under a management agreement and unless delegation of such powers and duties to a third party is contrary to law, then such powers and duties so delegated will be exercised by such third party in lieu of the Officers and/or Directors of this Corporation.

ARTICLE IV.  
MEMBERSHIP

Section 1. Definitions: Each Parcel owner in the Development Area shall be a member in the Association.

ARTICLE V.  
MEETINGS OF MEMBERSHIP

Section 1. Place. All meetings of the Corporation's Membership shall be held at the office of the Corporation in Gilmer County, Georgia, or such other place and time as may be stated in a notice thereof, provided that the place of the holding of such meeting shall be in Gilmer County, Georgia.

Section 2. Annual Meeting:

A. Annual Meetings of the Association shall be held during the months March or April at the call of the Board of Directors and at such place in Ellijay, Georgia as designated by the Board of Directors.

B. All Annual Meetings shall be held at the hour of 9:30 o'clock A.M., or at such other time designated by the notice.

C. Written notice of the Annual Meeting shall be served upon or mailed to each Member entitled to vote thereat, at such address as appears on the books of the Corporation. Such notice shall be made in compliance with the laws of the State of Georgia.

Section 3. Special Meetings:

A. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute or by the Articles of Incorporation, may be called by the President, and shall be called by the President or Secretary at the request, in writing, of fifty-one percent of the total number of Members of the Association.

B. Written notice of a special meeting of Members, stating the time, place and object thereof, shall be served upon or mailed to each Member entitled to vote thereat, at such address as appears on the books of the Corporation at least ten days before such meeting.

C. Business transacted at all special meetings shall be confined to the objects stated in the notice thereof.

Section 4. Quorum: Fifty-one percent of the total number of votes of Members of the Association present in person or represented by written proxy, shall be requisite to, and shall constitute a quorum at all meetings of the Members for the transaction of business, except as otherwise provided by statute, by the Articles of Incorporation, or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented at such subsequent meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called.

Section 5. Vote Required to Transact Business: When a quorum is present at any meeting, the vote of a majority of the votes of the Members present, in person or represented by written proxy, shall decide any question brought before the meeting, unless the question is one upon which, by express provision of the statutes or of the Articles of Incorporation or of these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 6. Right to Vote: Subject to the provisions of Article XII, each Parcel owner shall be entitled to one vote. At any meeting of the Members, every Member having the right to vote shall be entitled to vote in person or by proxy. Such proxy shall only be valid for such meeting or, if adjourned for lack of a quorum, the subsequent meeting thereof.

## ARTICLE VI. NOTICES

Section 1. Definitions: Whenever, under the provisions of the statutes or of the Articles of Incorporation or of these By-Laws, notice is required to be given to any Director or Member, it shall not be construed to mean personal notice; but such notice may be given in writing by mail, by depositing the same in a post office or letter box in post paid, sealed wrapper, addressed as appears on the books of the Corporation.

Section 2. Service of Notice – Waiver: Whenever any notice is required to be given under the provisions of the statutes or of the Articles of Incorporation, or of these By-Laws, or waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

Section 3. Address: The address for notice to the Corporation is 25 Blackberry Mountain Drive #8101, Ellijay, Georgia 30536.

## ARTICLE VII. FINANCES

Section 1. Fiscal Year: The Association shall operate upon the calendar year beginning on the 1st day of January and ending on the 31st day of December of each year. The Board of Directors is expressly authorized to change from a calendar year basis to that of a fiscal year basis whenever deemed expedient for the best interests of the Corporation.

Section 2. Checks: All checks or demands for money and notes of the Corporation shall be signed by any two of the following Officers: President or Vice President, and Secretary or Treasurer, or by such Officer or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Determination of Assessments:

A. The Board of Directors of the Association shall fix and determine from time to time the sum or sums necessary and adequate for the common expenses of the Association; and, if possible, make such determination in advance for each fiscal year. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the Association property, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto and any other expenses designated as common expenses from time to time by the Board of Directors of the Corporation; and common expenses shall also include the amounts to be paid by each member for his share under the Declaration; and the payment of all said common expenses shall be secured by the lien provided for in the Declaration. The Board of Directors or the party employed for the management of the Association may, on behalf of the Corporation, collect assessments and lease, maintain, repair and replace the property of the Association. Assessments will be exercised equally against all members of the Association. The Board of Directors may provide for assessments to be paid in advance.

B. When the amount of any assessment has been determined, a statement thereof shall be mailed, emailed or presented to each of the Parcel owners. All assessments shall be payable in advance on the first day of each month at the beginning of the quarter.

ARTICLE VIII.  
SEAL

The seal of the Corporation shall have inscribed thereon the name of the Corporation, the year of its organization, and the words "Non-Profit". Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

ARTICLE IX.  
STOCK

This Corporation shall never have or issue shares of stock and/or certificates of membership, nor will it ever have or provide for non-voting membership.

ARTICLE X.  
ASSOCIATION RULES

In addition to the other provisions of these By-Laws, the Board of Directors may from time to time propose House Rules and Regulations and together with these By-Laws, they shall govern the use of the Association property and the Development Area with respect to the Members of the Association. Such Rules and Regulations shall be considered part of these By-Laws.

ARTICLE XI.  
DEFAULT

Section 1. In the event a Member does not pay any sums, charges or assessments required to be paid to the Association within thirty days from the due date, the Association, acting on its own behalf or through its Board of Directors, may enforce its lien rights for assessments or take such other action to recover the sums, charges or assessments to which it is entitled, in accordance with the By-Laws and the Blackberry Mountain Declaration of Restrictions, Covenants and Conditions or the Blackberry Mountain Rules and the laws of the State of Georgia. If an action of foreclosure is brought against the owner of a Parcel for non-payment of monies due the Association, and as a result thereof the interests of the said owner in and to the Parcel is sold, then that person will thereupon cease to be a Member of the Association.

Section 2. If the Corporation becomes the owner of a Parcel by reason of foreclosure, it shall offer said Parcel for sale and, at such time as a sale is consummated, it shall deduct from such proceeds all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the Parcel, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the Parcel in question. All monies remaining after deducting the foregoing items of expense shall be returned to the former owner of the Parcel in question.

Section 3. The Association may suspend a Member and the members of his family. Such suspension shall result in the Member and the members of his family being barred from the use and privileges of the Association's facilities. Such suspension shall not exceed thirty days for each violation; except that in the event the violation is the non-payment of Association assessments, such suspension shall not extend more than thirty days after the payment of such Association assessments. Further, the Association may bring such appropriate action to enjoin such violations or enforce the provisions of these By-Laws and shall take such other legal action as it may deem appropriate. Such action or suspension shall not excuse the Member from his obligation to pay Association assessments and such assessments shall continue to accrue during such action or suspension.



ARTICLE XII.  
SUSPENSION OF RIGHTS

The Association reserves the right to suspend services and the voting rights of any Member for any violation of these By-Laws or, the rules and regulations which is not promptly remedied. Such suspension shall not relieve the Member of his obligation to pay his proportionate share of the amounts to be paid under the Declaration; and further, the Member shall remain liable for such payment even after services and voting rights have been suspended.

ARTICLE XIII.  
AMENDMENT

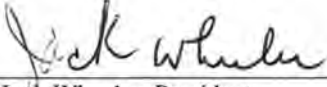
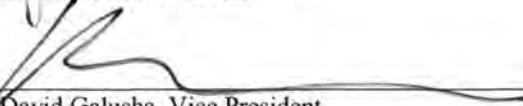
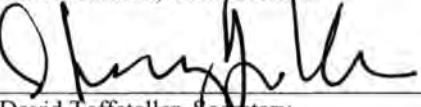
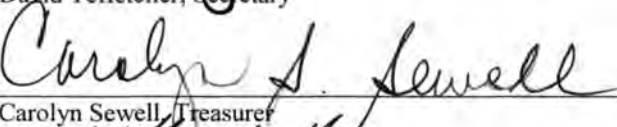
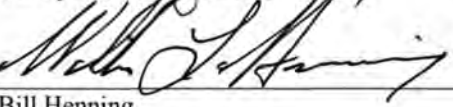
These By-Laws may only be altered, amended or added to at any duly called meeting of the Directors provided, (1) that the notice of the Meeting shall contain a full statement of the proposed amendment, and (2) that there is an affirmative vote of sixty-six and two-thirds percent of the Directors present in person or by proxy in favor of such alteration, amendment or addition to these By-Laws.

ARTICLE XIV.  
CONSTRUCTION

Wherever the masculine singular form of pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so requires. Roberts' Rules of Order shall govern the conduct of all meetings of the Members; excepting, however, that if any conflict exists between these By-Laws and said Roberts' Rules of Order, then the provisions of these By-Laws shall prevail.

ARTICLE XV.  
RULES & REGULATIONS

The Board of Directors may from time to time, by an affirmative vote of sixty-six and two-thirds percent of the Directors present at a duly called meeting in person or by proxy, promulgate rules and regulations for the conduct of the Members and their families and guests on the Association property. Such rules and regulations shall have the same force and effect as these By-Laws.

	July 16, 2010
Jack Wheeler, President	Date
	July 16, 2010
David Galusha, Vice President	Date
	July 16, 2010
David Teffeteller, Secretary	Date
	July 16, 2010
Carolyn Sewell, Treasurer	Date
	August 22, 2010
Bill Henning	Date

**BLACKBERRY MOUNTAIN ASSOCIATION  
AMENDMENT TO BY-LAWS**

**AMENDMENT 1**

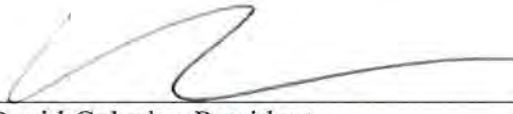
Pursuant to Article XIII of the Blackberry Mountain Association, Inc. Restated Bylaws 2010, the undersigned being the members of the Board of Directors of the Association, hereby adopt the following Amendment to the Blackberry Mountain Association, Inc. Restated Bylaws 2010.

RESOLVED, that Article V, Section 4 of the Association's By-laws be, and hereby is, deleted in its entirety and replaced with the following:


ARTICLE V. Section 4.


Quorum: Twenty (20) percent of the total number of votes of Members of the Association present in person or represented by written proxy, shall be requisite to, and shall constitute a quorum at all meetings of the Members for the transaction of business, except as otherwise provided by statute, by the Articles of Incorporation, or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented at such subsequent meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called.

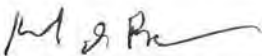
Adopted by affirmative vote of the undersigned members of the Board of Directors of the Association in a regular meeting conducted on December 3, 2016.

  
\_\_\_\_\_  
David Galusha, President

  
\_\_\_\_\_  
Carolyn Sewell, Treasurer

  
\_\_\_\_\_  
David Teffeteller, Vice President

  
\_\_\_\_\_  
Dolly Vantrepotte, Member at Large

  
\_\_\_\_\_  
Rich Baker, Secretary

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DECLARATION OF RESTRICTIONS, COVENANTS  
AND CONDITIONS OF  
BLACKBERRY MOUNTAIN

This declaration is made the 2 day of July, 1981 by Mountain Cabins, Inc., a Georgia corporation, as owner of a unique community known as Blackberry Mountain and as more fully described in the Survey, Plot Plan and Graphic Description attached as Exhibit "A". The purpose of this Declaration is to perpetuate the rustic environment for the benefit of all who acquire property therein.

Mountain Cabins, Inc. seeks to develop this property in a manner which insures the full enjoyment of the traditions and natural advantages of the area for all who acquire property therein. Firm, but necessary, constraints will be used to maintain the integrity of the project as a community of authentic mountain homes. Mountain Cabins, Inc. believes that this fundamental concept can serve the interests of those who become such owners by fostering a beneficial land use which retains the unique character of the land and creates an atmosphere enriching the spirit of its participants.

It must be assumed that all who become owners of property subject to this Declaration are motivated by the character of the mountain environment in which it is located, and accept, for and among themselves, the principle that the development and use of the property must preserve that character for present and future enjoyment of all the owners. It is also assumed that those who are entrusted with the administration of this property will discharge their trust in full recognition of that principle and, to the extent consistent therewith, will foster maximum flexibility and freedom of individual expression.

It is to promote the foregoing that this Declaration is made and it is the intention of Mountain Cabins, Inc. that the limitations, restrictions, covenants and conditions of this Declaration, and of all other declarations supplemental hereto, will be understood and construed in recognition of the foregoing.

GRANTOR HEREBY DECLARES that all that portion of the real property described in Exhibit "A" hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are imposed for the purpose of protecting the value and desirability of, and which shall run with, said real property and be binding on all parties having any right, title or interest therein, or any part thereof, their heirs, successors, administrators and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I - DEFINITION OF TERMS

Section 1.01 - "Grantor" shall mean and refer to Mountain Cabins, Inc., its successors and assigns.

Section 1.02 - "Parcel" shall mean and refer to any building lot identified on the Survey, Plot Plan and Graphic Description of Blackberry Mountain.

Section 1.03 - This "Declaration" shall mean and refer to the contents of this entire document and amendments hereto.

Section 1.04 - "Roads" shall mean any and all interior roads used for ingress and egress located at Blackberry Mountain.

Section 1.05 - "Association" shall mean and refer to Blackberry Mountain Association, Inc., its successors and assigns.

Section 1.06 - "Owner" shall mean and refer to the record owner, whether one of more persons or entities, of a fee simple title to any parcel, including Grantor, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.07 - "Common Area" shall mean all real property, including easements, owned by the Association for the common use and enjoyment of the owners or owned by the Grantor and designated as "Common Area" on the aforesaid survey and plot plan.

Section 1.08 - "restricted Private Area" shall mean that area within each Parcel that is the subject of a recorded setback and/or easement.

Section 1.09 - "Private Area" shall mean that area within each Parcel which is not Restricted Private Area or Common Area.

Section 1.10 - "Blackberry Mountain" shall mean that certain real property more particularly described in Exhibit "A" hereto attached.

## ARTICLE II - LAND CLASSIFICATIONS

Section 2.01 - Private Area : Uses, Restrictions. The Private Area of each Parcel shall be for the exclusive use and benefit of the Owner thereof, subject, however, to all of the following limitations and restrictions and reservations:

(a) The Association, or its duly authorized agents shall have the right at any time, and from time to time, without any liability to the Owner for trespass or otherwise, to enter upon any Private Area for the purpose (1) of maintaining such Private Area, as provided for in this Declaration; (2) of maintaining any and all Common Areas; (3) of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Private Area in violation of any provisions hereof; (4) of restoring or otherwise reinstating such Private Area as authorized; and (5) of otherwise enforcing, without any limitation, all of the restrictions set forth as a part of this Declaration, and the Blackberry Mountain Rules.

(b) No improvement, excavation, or other work which in any way alters any Private area from its natural or improved state existing on the date such Private Area was first conveyed in fee by Grantor to an Owner shall be made or done except upon strict compliance with the restrictions set forth in this Declaration.

(c) The Private Area of each Parcel shall be used exclusively for residential, recreational and agricultural purposes.

(d) Each Private Area, and any and all improvements from time to time located thereon, shall be maintained by the Owner thereof in good condition and repair, at such Owner's sole cost and expense.

(e) No noxious or offensive activity shall be carried on upon any Private Area, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Private Areas, or in their enjoyment of any Common Area. In determining whether there has been a violation of this paragraph, recognition must be given to the premise that the Owners, by virtue of their interest and participation in Blackberry Mountain, are entitled to the reasonable enjoyment of the natural benefits and surroundings of Blackberry Mountain.

(f) No signs whatsoever, including without limitation, commercial, political and similar signs, visible from neighboring property, shall be erected or maintained upon any Private Area or Common Area, except

(1) Residential identification signs of a combined total face area of three (3) square feet or less for each residence approved by the Design Committee.

(2) During the time of construction of any residence or other improvement, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen.

(g) No house trailer, travel trailer, camper, permanent tent, or similar facility or structure shall be kept, placed or maintained upon any Private Area or Common Area except in designated areas, if any, at any time for living or camping; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with the construction of any work or improvement permitted.

(h) No trailer of any kind, truck, camper or boat shall be kept, placed or maintained upon any Private area in such a manner that such trailer, truck, camper or boat is visible from neighboring property; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or



facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted.

(i) No accessory structures or buildings shall be constructed, placed or maintained upon any Private Area, unless approved by the Design Committee; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of the main structure of the residence.

(j) No trailer, vehicle, or boat shall be constructed, reconstructed or repaired upon any Private Area in such manner that such construction, reconstruction or repair is visible from neighboring property.

(k) Except as otherwise permitted by paragraph (m) below, all garbage and trash shall be placed and kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property. The collection and disposal of garbage and trash shall be in strict compliance with Blackberry Mountain Rules.

(l) Outside clothesline or other outside clothes drying or airing facilities shall not be visible from neighboring property.

(m) The maintenance of accumulated waste plant materials is prohibited except as part of an established compost pile which shall be maintained in such manner as not to be visible from neighboring property.

(n) No animals, other than household pets, shall be maintained in or upon any Private Area. Other farm animals may be maintained on designated Association properties by contract with its management.

Section 2.02 - Private Area: Construction and Alteration of Improvements, Excavations, etc. The right of an Owner to construct, reconstruct, refinish, alter or maintain any improvement upon, under or above any Private Area, or to make or create any excavation or fill thereon, or to make any change in the natural or existing surface drainage thereof, or to install any utility line (wire or conduit) thereon or thereover, or to destroy or remove any tree therefrom, shall be subject to all of the following limitations and conditions for this section.

(a) Except to the extent permitted by paragraph (g) below, any construction or reconstruction of, or the refinishing or alteration of any part of the exterior of, any improvement upon any Private Area is absolutely prohibited until and unless the Owner of such Private Area first obtains the approval therefor from the Design Committee as herein provided and otherwise complies with all of the provisions of this section. The Association may remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of this paragraph and the Owner thereof shall reimburse the Association for all expenses incurred in connection therewith.

(b) Except to the extent reasonable necessary for the construction, reconstruction or alteration of any improvement for which the Owner has obtained approved plans pursuant to this section,

(1) No excavation or fill which would be visible from neighboring property shall be created or installed upon, and

(2) No change in the natural or existing drainage for surface waters of, and

(3) No living tree having a height of six (6) feet or more and having a trunk measuring four (4) inches or more in diameter at ground level shall be destroyed or removed from

any Private Area until and unless the Owner of such Private Area first obtains the approval therefor from the Design Committee as herein provided and such Owner otherwise complies with all of the provisions of this section. The Association may, in the event of any violation of clause (1) or clause (2) above, restore such Private Area to its state existing immediately prior to such violations, and in the event of any violation of clause (3) above, replace any tree which has been improperly removed or destroyed with either a similar tree in type and size or with such other tree as the Association may

deem appropriate. The Owner of such Private Area shall reimburse the Association for all expenses incurred by it in performing its work under this paragraph; provided, however, that with respect to the replacement of any tree, the Owner shall not be obligated to pay an amount in excess of the expenses which would have been incurred by the Association had it elected to replace the destroyed or removed tree with a tree similar in type and size.

(c) Any Owner proposing to construct or reconstruct, or to refinish or alter any part of the exterior of, any improvement on or within his Private Area or to perform any work which under paragraph (b) above requires the prior approval of the Design Committee, shall apply to the Design Committee for approval as follows:

(1) The Owner shall notify the Design Committee of the nature of the proposed work, and Owner shall submit to the Design Committee for approval such plans and specifications for the proposed work as the Design Committee may from time to time request, including, when deemed appropriate by the Design Committee, but without limitation, the following:

(aa) A plot plan of the Parcel showing (i) contour lines, (ii) the location of all existing and/or proposed improvements, (iii) the proposed drainage plan, (iv) the proposed sanitary disposal facilities, (v) the location of existing trees, (vi) such trees which the Owner proposes to remove, and (vii) the location of all proposed utility installations;

(bb) floor plans;

(cc) drawings showing all elevations;

(dd) description of exterior materials with samples;

(ee) working drawings and construction specifications;

(ff) the Owner's proposed construction schedule.

(2) If at any time following an Owner's notification to the Design Committee pursuant to clause (1) above of his proposed work the Design Committee should determine that it would be in the best interest of Blackberry Mountain for such Owner to employ an architect to design any improvement involved in the proposed work, the Design Committee shall inform such Owner in writing of its determination, whereupon all plans and specifications submitted pursuant to clause (1) above must be prepared by an architect.

(d) Subject to the provisions of paragraph (e) below, the Design Committee will approve the plans, drawings and specifications submitted to it pursuant to paragraph (c) only if the following conditions shall have been satisfied:

(1) The Owner and the Owner's architect, if any, shall have strictly complied with the provisions of paragraph (c) above; and

(2) The Design Committee finds that the plans and specifications conform to Blackberry Mountain restrictions, particularly to the requirements and restrictions of this section and to the Design Committee rules in effect at the time such plans were submitted to the Design Committee.

Such approval will be in writing and may be conditioned upon the submission by the Owner or the Owner's architect, if any, of such additional plans and specifications as the Design Committee shall deem appropriate for the purpose of insuring that the construction of the proposed improvement shall be in accordance with the approved plans; provided, however, that plans, drawings and specifications which have been neither approved nor rejected within thirty (30) days from the date of submission thereof to the Design Committee shall be deemed approved. One set of plans as finally approved shall be retained and maintained by the Design Committee as a permanent record.

(e) Notwithstanding the provisions of paragraph (d) above, if within the thirty (30) day period referred to in said paragraph (d) the members of the Design Committee, in their sole discretion, unanimously find that the proposed work, for any reason whatsoever (including the design, height or location of any proposed improvement and the probable effect thereof on other Owners in the use and enjoyment of their Private Area or the Common Area), would be incompatible with Blackberry Mountain, then the Design Committee shall not approve the plans, drawings,

and specifications submitted to it pursuant to paragraph (c) above and shall so notify the Owner concerned in writing setting forth the reasons for such disapproval.

(f) Grantor shall, upon the timely request of the Design Committee, file with the Design Committee copies of such of the plans and specifications described in paragraph (c) above, which have been prepared by Grantor and which are deemed by the Design Committee to be necessary for the purpose of maintaining a permanent record of all improvements constructed or being constructed by Grantor upon any Private Area or Parcel.

(g) Any provision herein to the contrary notwithstanding, any Owner may at any time, and from time to time, without first obtaining the approval of the Design Committee and without otherwise complying with paragraph (c) above, reconstruct or refinish any improvement or any portion thereof, excavate or make any other installation, in such manner as may be set forth in the last plans thereof approved by the Design Committee and not revoked pursuant to paragraph (i) below, or in the plans and specifications filed pursuant to paragraph (f) above.

(h) Upon receipt of the approval from the Design Committee pursuant to paragraph (d) above, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations, and excavations pursuant to the approved plans.

(i) With reference to paragraph (h) above, Owner shall satisfy all conditions and commence the construction, reconstruction, refinishing, alterations or other work pursuant to the approved plans within one (1) year from the date of such approval. If the Owner shall fail to comply with this paragraph, any approval given pursuant to paragraph (d) above shall be deemed revoked unless, upon the written request of the Owner made to the Design Committee prior to the expiration of said one (1) year period and upon a finding by the Design Committee that there has been no change in circumstances, the time for such commencement is extended in writing by the Design Committee.

(j) With further reference to paragraph (h) above, the Owner shall in any event complete the construction, reconstruction, refinishing, or alteration of the foundation and all exterior surfaces (including the roof, exterior walls, windows and doors) of any improvement on his Private Area within one (1) year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies or natural calamities. If Owner fails to comply with this paragraph, the Design Committee shall notify the Association of such failure and the Association, at its option, may either complete the exterior in accordance with the approved plans or remove the improvement, and the Owner shall reimburse the Association for all expenses incurred in connection therewith.

(k) Upon the completion of any construction or reconstruction of, or the alteration or refinishing of the exterior of any improvement, or upon the completion of any other work for which approved plans are required under this section, the Owner shall give notice thereof to the Design Committee and within sixty (60) days thereafter the Design Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with approved plans. If the Design Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with approved plans, it shall notify the Owner of such non-compliance within such sixty (60) day period and shall require the Owner to remedy such non-compliance. If, upon the expiration of sixty (60) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Design Committee shall notify the Association of such failure, and the Association, at its option, may either remove the improvement or remedy the non-compliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith. If for any reason the Design Committee fails to notify the Owner of any such non-compliance within sixty (60) days after receipt of said notice of completion thereof from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

(l) The following standards and restrictions are applicable to the construction, reconstruction, alteration and refinishing of any and all improvements from time to time existing upon Private Areas:



(1) All improvements shall be constructed in accordance with applicable building line, setback, and height provisions set forth by the Design Committee.

(2) Except for roofing nails, bolts, other approved connecting devices and hardware fixtures used in connection therewith, all fences, screens and similar exterior structures shall be constructed solely of wood, and other natural materials or a suitable wood substitute approved by the Design Committee.

(3) Each residence shall contain a sewage disposal system approved by the Design Committee and the public authority, if any, having jurisdiction. In no event shall sewage be discharged directly or indirectly into any creek or marsh.

Section 2.03 - Restricted Private Area: Uses, Restrictions. The Restricted Private Area of each Parcel shall be for the limited use and benefit of the Owner thereof, subject to the rights of the Association set forth below and to all of the following limitations and restrictions:

(a) Grantor and the Association, or their duly authorized agents, shall have the right at any time, and from time to time, without liability to the Owner for trespass or otherwise, to enter upon any Restricted Private Area for the purpose of (1) installing and maintaining access Roads and power and other public and private utility lines, (2) removing any improvement constructed or reconstructed or maintained upon such Restricted Private Area in violation of the terms hereof, and (3) otherwise enforcing the restrictions set forth in this section.

(b) No improvement, excavation or structure, except Roads, fences and the structures and improvements authorized under subparagraph (a) above, shall be permitted in such Restricted Private Area.

(c) There shall be no use of the Restricted Private Area except (1) any use contemplated by any improvement permitted under subparagraphs (a) and (b) above, and (2) natural agricultural and recreational uses which do not injure, modify or deface such Restricted Private Area or the vegetation thereon, or interfere with the structures and uses specified in subparagraphs (a) and (b) above or cause unreasonable embarrassment, disturbance or annoyance to other Owners in their enjoyment of their Private Areas.

Section 2.04 - Common Area: Uses, Restrictions. The exclusive use of Common Area shall be reserved equally to all Owners and to guests, subject, however, to the following limitations and restrictions:

(a) The use of any Common Area shall be subject to Blackberry Mountain Rules.

(b) The use of any Common Area shall be subject to such easements and rights-of-way reserved therefrom at the time of the conveyance thereof by Grantor or the Association to such road and public utility entities for easements and rights-of-way as may from time to time be taken under power of eminent domain and to such other road and public and private utility entities for easements as may from time to time be granted or conveyed by the Grantor or the Association.

(c) No improvement, excavation or other work which in any way alters any Common Area from its natural or existing state may be made or done except upon strict compliance with, and within the restrictions and limitations of, the provisions hereof.

(d) Any portion of any Common Area may be developed into one or more recreational facilities. Upon the development of any recreational facility by Grantor or Association pursuant to the provisions contained herein, such facility shall be used exclusively by Owners, and guests who become permitted users, subject to the provisions of the Blackberry Mountain Rules with respect to such use.

(e) Except to the extent otherwise permitted pursuant to the provisions of paragraph (d) above, there shall be no use of Common Area, exclusive of Roads, except natural recreational uses which so not injure or scar the Common Area or the vegetation thereon, which will increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their Private Areas, or in their enjoyment of Common Areas.

### ARTICLE III - DESIGN COMMITTEE

Section 3.01 - Organization, Power of Appointment and Removal of Members. There shall be a Design Committee, organized as follows:

(a) The Design Committee shall consist of three (3) members. No member shall be required to meet any qualifications for a membership on the Design Committee.

Each of said persons shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed, as set forth herein.

(b) The Right from time to time to appoint and remove all members of the Design Committee shall be, and is hereby, reserved to and vested solely in the Association; provided, however, that any such appointment or removal shall be subject to the prior written approval of Grantor so long as Grantor owns one or more Parcels then subject to this Declaration.

Section 3.02 - Duties. It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it pursuant to Sections 2.01 and 2.02 herein, and to perform such other duties set forth in this Declaration and from time to time delegated to it by the Association.

Section 3.03 - Meetings, Action, Compensation, Expenses. The Design Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any two (2) members shall constitute an act by the Design Committee unless the unanimous decision of its members is otherwise required by this Declaration. Unless authorized by the Association, the members of the Design Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Design Committee function.

Section 3.04 - Rules. The Design Committee may, from time to time and in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations, to be known as "Design Committee Rules", which among other things, interpret or implement the provisions of this Declaration.

Section 3.05 - Non-Waiver. The approval by the Design Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Design Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently submitted for approval.

Section 3.06 - Liability. Neither the Design Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development, or any property within Blackberry Mountain, provided, however, that any such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing, the Design Committee or any member thereof, may, but is not required to, consult with or hear the Association or any Owner with respect to any plans, drawings or specifications, or any other proposal submitted to the Design Committee.

### ARTICLE IV - BLACKBERRY MOUNTAIN ASSOCIATION, INC.

#### Section 4.01 - Organization.

(a) The Association is a non-profit corporation charged with the duties and empowered with the rights set forth herein. It was created by Articles of Incorporation (the "Articles") and its affairs shall be governed by the Articles and By-Laws.

#### Section 4.02 - Membership.

(a) Each Owner, by virtue of being an Owner and for so long as he is an Owner, shall be a Member of the Association.

(b) The rights, duties, privileges and obligations of an Owner as a member of the Association shall be those set forth in, and shall be exercised and imposed in accordance with the provisions of, this Declaration, Blackberry Mountain Rules and Articles and By-Laws of the Association.

Section 4.03 - Voting Rights. In order to retain control of the environment during the development period and still make proper provision for the enfranchisement of the Association membership at large, the following voting procedure and rights shall be established, to-wit; Purchasers shall, upon closing, become full voting members of the Association. There shall be one voting membership in Blackberry Mountain Association, Inc. for the Owner of each single-family residential lot, hereinafter sometimes referred to as "Parcel", whether or not such lot is improved. The person entitled to cast the vote shall be designated in writing, which designation shall be signed by all of the record Owners of the single-family residential lot, or, in the case of a corporation, by the Officers authorized to sign on behalf of the corporation, and filed with the Association. The Grantor, and its successors, substitute and/or co-developers, shall be a Member of the Association and shall have reserved to Grantor in the aggregate sufficient voting rights (memberships) such that Grantor shall have and be entitled to cast a majority of the total number of votes in the Association attributable to membership, including Grantor, or otherwise until there shall have been created memberships in single-family residential lots aggregating 90% of the total number of Parcels, whichever shall be the latter to occur; providing, however, that until there shall have been created in purchasers of single-family residential lots a total of 90% of the total number of Parcels, Grantor shall have three (3) votes for each membership held by such a purchaser. Furthermore, Grantor shall, subsequent to the expiration of its right set forth above to cast a majority of the total number of votes, retain and have votes attributable to its retained memberships not appurtenant to single-family residential lots aggregating 51% of the total number of votes which may at any time be cast by the membership, including Grantor, until such time as Grantor shall, by an instrument in writing, deliver to the Association a relinquishment of such voting rights. In all cases, and so long as Grantor, or its assigns, shall be or intend to be continuing the development of Blackberry Mountain, there shall be no amendment to the Articles or By-Laws of the Association or to the restrictions running with the lands in the development known as Blackberry Mountain without consent of the Grantor. Nothing herein and no conveyance of real property by Grantor, shall be deemed to convey the voting rights reserved to Grantor herein contained and reserved, to any person or persons. The conveyance or assignment of the voting rights, or any portion of them, reserved to Grantor herein shall be made only by instrument in writing to that effect, except as provided for below. In no event shall Grantor be disenfranchised with respect to voting rights attributable to or deriving from a single-family lot owned by Grantor.

Section 4.04 - Duties and Obligations of the Association. The Association shall have the obligations and duties, subject to this Declaration, to do and perform each and every of the following for the benefit of the Owners and for the maintenance and improvement of Blackberry Mountain.

(a) The Association shall accept title to easements to or interest in any real property from time to time conveyed to it, if ever, by Grantor, pursuant to the provisions, and subject to the restrictions imposed by Section 6.03 below.

(b) The Association shall maintain, or provide for the maintenance of, any access Roads and Common Areas including recreational facilities and all improvements of whatever kind and for whatever purpose from time to time located on such Common Areas in good order and repair; provided, however, that notwithstanding the foregoing, the Association shall have no obligation to maintain in good order and repair any improvement constructed upon any Private Area by the Owner. Roads shall be maintained in a condition of repair at least equal to that of comparable County roads of Gilmer County.

(c) The Association may enter upon and maintain, or provide for the maintenance of, any Private Area which is not maintained by the Owner thereof, and assess any and all costs for such maintenance and any expense in connection with such maintenance as provided for herein.

(d) To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon any portion of Common Area or upon any recreational facility or other property owned by the Association. In addition, should the taxes and assessments applicable to any Common Area



not be separately assessed, the Association shall pay to the person against whom the same is assessed such amounts of such taxes and assessments as shall be properly allocable to the Association's interest or ownership therein.

(e) The Association shall obtain and maintain in force the following policies of insurance:

(1) Fire and extended coverage insurance on all improvements owned by the Association and from time to time located upon or within any Common Area, or recreational facility, the amount of such insurance to be not less than ninety percent (90%) of the aggregate full insurable value, meaning actual replacement value (exclusive of the cost of excavations, foundations and footings), of such improvements as from time to time determined by the Association;

(2) Bodily injury liability insurance with limits per person and per occurrence, in amounts which the Board of Directors may from time to time deem appropriate, against any and all liability with respect to Blackberry Mountain or any portion thereof, or arising out of the maintenance of use thereof; and

(3) Property damage liability insurance with a deductible and a limit per incident in amounts which the Board of Directors may from time to time deem appropriate.

The policy or policies of insurance referred to in sub-paragraphs (1), (2) and (3) above shall name as insureds, (aa) the Grantor, the Association, the Board of Directors of the Association (the "Board"), the Design Committee, and their representatives, members and employees; and, with respect to any liability arising out of the maintenance and use of Common Area or any recreational facility (bb), the Owners. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insured or insureds to pay any amount in excess of the maximum limits stated therein. Each and every policy of insurance obtained by the Association, whether or not required to be obtained pursuant to the provisions of this Declaration, shall expressly waive any and all rights of subrogation against Grantor, its representatives and employees, and any Owner.

(f) The Association shall accept and act upon applications submitted to it for the development of Private Area recreational facilities.

(g) The Association shall from time to time make, establish, promulgate, amend and repeal the Blackberry Mountain Rules as provided for herein.

(h) To the extent provided for herein, the Association shall exercise its rights to appoint and remove members of the Design Committee to insure that at all reasonable times there is available a duly constituted and appointed Design Committee.

(i) The Association shall take such action, whether or not expressly authorized by this Declaration, as may reasonably be necessary to enforce the restrictions, limitations, covenants, and conditions of this Declaration, the Blackberry Mountain Rules and the Design Committee Rules.

**Section 4.05 - Powers and Authority.** The Association shall have all of the powers set forth in the Articles, together with its general powers as a non-profit corporation, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the By-Laws, this Declaration, and the Blackberry Mountain Rules, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners and guests of Blackberry Mountain. Without in any way limiting the generality of the foregoing.

(a) The Association shall have the power and authority at any time, and from time to time, and without liability to any Owner, to enter upon any Parcel for the purpose of enforcing any and all of the provisions called for herein, or for the purpose of maintaining and repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required. The Association shall also have the power and authority from time to time, in its own

name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and the Blackberry Mountain Rules and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration and the Blackberry Mountain Rules.

(b) In fulfilling any of its obligations or duties under this Blackberry Mountain Declaration of Restrictions, Covenants and Conditions, including, without limitation, its obligations or duties for the maintenance, repair, operation or administration of any Common Area, any access Road, and recreational facility, any facility or improvement in any Restricted Private Areas, and, to the extent necessitated by the failure of the Owner thereof, any Parcel, the Association shall have the power and authority:

(1) To contract, and pay for, or otherwise provide for, the maintenance, restoration and repair of all improvements of whatever kind, including Common Area Roads, and for whatever purpose, from time to time located upon Common Area, or within any recreational facility;

(2) To obtain, maintain and pay for such insurance policies or bonds as the Association shall deem to be appropriate for the protection or benefit of Blackberry Mountain, the Association, the members of the Board, the members of the Design Committee, Owners or guests, including, without limitation, workmen's compensation insurance, automobile non-ownership insurance, and performance and fidelity bonds;

(3) To contract and pay for, or otherwise provide for, such utility services, including, without limitation, water, electrical, telephone and gas services, as may from time to time be required;

(4) To contract and pay for, or otherwise provide for, the services of architects, engineers, accountants, attorneys and certified public accountants and such other professional and non-professional services as the Association deems necessary;

(5) To contract and pay for, or otherwise provide for, fire, security and such other protection services as the Association shall from time to time deem necessary for the benefit of the Blackberry Mountain Owners and guests, on any property located within Blackberry Mountain or owned by the Association;

(6) To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary; and

(7) To pay and to discharge any and all liens from time to time placed or imposed upon any Common Area or recreational facility on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.

(c) In fulfilling any of its obligations, or in exercising any of its rights to contract improvements or other work upon any Common Area or Restricted Private Area, or in connection with the development of any Road, farm or recreational facility, the Association shall have the right, power and authority:

(1) To contract and pay for, or otherwise provide for, the construction of such improvements or other work upon such terms and conditions as the Association shall deem appropriate;

(2) To obtain, maintain and pay for such insurance policies or bonds, in addition to those obtained by the Association pursuant to sub-paragraph (2) of paragraph (b) above, as the Association may deem appropriate for the protection or benefit of the Association, and members of the Board, the members of the Design Committee, Owners and guests, including, without limitation, builder's risk insurance, workmen's compensation insurance and performance and fidelity bonds;

(3) To contract and pay for, or otherwise provide for, the services of architects, engineers, accountants, attorneys and certified public accountants and other professional and non-professional services; and

(4) To pay and discharge any and all liens arising out of the construction of any such improvement.

(d) The Association shall have the power and authority from time to time to grant and convey to any third party such easements, rights-of-way, parcels or strips of land, in, on, over or under any Common Area, or recreational facility, for the purpose of constructing, erecting, operating and maintaining thereon, therein or thereunder, (1) Roads, walks, driveways, and park areas; (2) poles, wires and conduit for the transmission of electricity for lighting, heating, power, telephone, television and other purposes and for the necessary attachments in connection therewith; and (3) private sewers, storm water drains, land drains and pipe, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection with the foregoing.

(e) The Association has employed the management services of Mountain Cabins, Inc. to manage the affairs of the Association. A copy of the existing contract is attached herewith, and marked Exhibit "B". The Association may cancel the management contract by a vote of 75% of the Owners of record pursuant to the terms thereof.

(f) The Association shall have the right from time to time to pay, compromise or contest any and all taxes and assessments levied against all or any part of any Common Area, or recreational facilities or upon any real or personal property belonging to the Association; provided, however, that the Association shall pay and discharge the lien imposed by such tax or assessment prior to the time it would otherwise become delinquent.

(g) Subject to the public governmental restriction, regulation, and/or authority, the Association shall have the power and authority from time to time to reclassify any portion of any "Restricted Private Area" to "Private Area" for the benefit of the Owner of the Parcel in which it is located; subject, however, to the retention of such easements and rights and the imposition of such conditions as the Association may deem appropriate for the benefit of the Association or any of the Owners. Such reclassification shall be effected by the execution and recording in the Public Records of Gilmer County, Georgia (the "Public Records"), or an appropriate document describing the Parcel, or portion thereof, affected.

#### Section 4.06 - Blackberry Mountain Rules.

(a) The Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations, to be known as the Blackberry Mountain Rules, governing among other things:

- (1) The use of Common Areas.
- (2) The use of Roads.
- (3) The collection and disposal of refuse.
- (4) The keeping and maintenance of animals within Blackberry Mountain.

(b) With respect to sub-paragraph (a), (1) above, the Blackberry Mountain Rules may, without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of Blackberry Mountain for all Owners, their families, invitees, licensees and lessees, and for guests, restrict and/or govern the use of Common Area and recreational facilities by any guest or by Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that with respect to use of Common Area and recreational facilities, the Blackberry Mountain Rules may not discriminate between Owners.

(c) With respect to sub-paragraph (a), (2) above, the Blackberry Mountain Rules may, without limitation, provide for

- (1) Parking restrictions and limitations.
- (2) Maximum speeds for vehicular travel.
- (3) The time or times when commercial vehicles may be permitted to use the Roads, and
- (4) The type or types of vehicles other than conventionally equipped passenger automobiles which may be permitted on Blackberry Mountain or any part thereof or any privately owned or Common Area.

(d) A copy of the Blackberry Mountain Rules, as they may from time to time be adopted, amended or repealed, certified by the Secretary or any Assistant Secretary of the Association, shall be recorded in the Public Records and duplicate copies thereof shall be delivered to each Owner. Upon such recordation and delivery, the Blackberry Mountain Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4.07 - Liability. No member of the Board shall be personally liable to any Owner, guest, participating facility, or to any other persons, including Grantor, for any error or omission of the Association, its representatives and employees, the Design Committee or the Manager; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith.

Section 4.08 - General Powers. The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authority referred to in Section 4.05.

#### ARTICLE V - FUNDS AND ASSESSMENTS

Section 5.01 - Operating Fund. There shall be an operating fund, into which the Association shall deposit all monies paid to it as:

- (a) Maintenance assessments,
- (b) Capital improvement assessments,
- (c) Special assessments,
- (d) Use fees paid by users of recreational facilities,
- (e) Use fees paid by participating facilities,
- (f) Miscellaneous fees, and
- (g) Income and profits attributable to the operating fund;

from which funds the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

#### Section 5.02 - Maintenance Assessments.

(a) Within thirty (30) days prior to the commencement of each fiscal year, the Association shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions (including a reasonable provision for contingencies and replacements), and shall subtract from such estimate:

(1) The estimate of costs and expenses referred to in Section 5.03,

(2) An amount equal to the anticipated balance (exclusive of any reserves for contingencies and replacements) in the operating fund at the start of such fiscal year which is attributable to maintenance assessments,

(3) An amount equal to the total of the uncollected assessments levied in the current fiscal year which will be collected after the start of the next fiscal year, and

(4) The estimated receipts for all use fees, if any, to be collected from users of recreational facilities and from participating facilities during the next fiscal year.

(b) The sum or net estimate determined pursuant to paragraph (a) above shall be assessed to the Owners as a maintenance assessment in the following manner: an equal amount, to be fixed by the Association, shall be assessed to the Owner of each Parcel subject to this Declaration.

(c) If at any time and from time to time during any fiscal year the maintenance assessment proves inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further assessment in the amount of such actual or estimated inadequacy, which shall be assessed to the Owners in the manner set forth in paragraph (b) above.



(d) Maintenance assessments shall be due and payable by the Owners to the Association in equal monthly installments, on or before the first day of each month during the fiscal year, or in such manner as the Association shall designate.

(e) No maintenance assessment shall be levied unless the Association has approved such assessment by the vote or written consent of Owners (including Grantor) owning not less than fifty-one percent (51%) of the Parcels then subject to this Declaration.

(f) The costs and expenses for which any maintenance assessment may be assessed are those relating to the maintenance, repair and replacement of facilities and equipment and to current services and operations and it is intended that major capital improvements will be undertaken and major items of capital equipment will be purchased through funds derived from separate capital improvement assessments under Section 5.03, provided, however, that nothing herein shall prevent the reconstruction or replacement of facilities and equipment, now existing or hereafter acquired, through such maintenance assessments, whether directly or through creation of appropriate reserves.

Section 5.03 - Capital Improvement Assessments. In addition to the annual maintenance assessments authorized above, the Association may levy a capital improvement assessment for the purpose of defraying the cost of constructing any capital improvements, including any recreation facility, or of acquiring any fixtures, equipment or personal property of a capital nature, not otherwise to be funded through maintenance assessments. Such assessment must have the consent of fifty-one percent (51%) of the total number of votes in the Association attributable to membership, including Grantor, as set forth in Section 4.03 above.

Section 5.04 - Special Assessments. The Association may levy a special assessment against any Owner, who as a direct result of his acts or failure or refusal to act or otherwise to comply with this Declaration, the Blackberry Mountain Rules or the Design Committee Rules, causes monies to be expended from the funds of the Association in performing its functions under this Declaration. Such assessment shall be in the amount so expended, and shall be due and payable to the Association when levied.

Section 5.05 - Default in Payments of Assessments.

(a) Each assessment provided for herein shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed to be in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at the maximum legal rate per annum and costs, including reasonable attorneys' fees, shall become a lien upon the Parcel or Parcels of such Owner upon recordation in the Public Records by the Association of a notice of default. Such lien shall be subject and subordinate to the lien of any mortgage upon the Parcel or Parcels of such Owner which is made in good faith and for value and is recorded prior to the recordation of such notice of default. The Association shall record such notice of default within sixty (60) days following the occurrence of such default, and shall commence proceedings to enforce such lien within six (6) months following such recordation. The foregoing remedy shall be in addition to any other remedies provided by law.

(b) The Association shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any Parcel or Parcels and such certificate shall be conclusive upon the Association and the Owners, in favor of all persons who rely thereon in good faith, as to the amount of such indebtedness on the date of the certificate. The Association shall furnish a copy of such certificate to any Owner upon request at a reasonable fee.

ARTICLE VI - MISCELLANEOUS PROVISIONS

Section 6.01 - Annexation.

(a) Additional property and Common Area may from time to time be annexed to the real property subject to this Declaration with the consent of fifty-one percent (51%) of the total number of votes in the Association attributable to membership, including Grantor, as set forth in Section 4.03 above.



(b) Such annexation shall be effective upon the recording in the Public Records of a Notice of Annexation of Territory containing the provisions set forth in subsections (c) and (d) of this Section. Thereupon, the covenants, conditions, restrictions and reservations contained in this Declaration shall apply to the annexed land in the same manner as if it were originally covered by this Declaration; and thereafter, the rights, powers and responsibilities of the parties subject to this Declaration with respect to the annexed land shall be the same as with respect to the original land, and the rights, privileges, duties and liabilities of the Owners of all Parcels within the annexed land shall be the same as in the case of the original land.

(c) The Notice of Annexation of Territory referred to in sub-section (b) of this Section shall contain the following provisions:

(1) A reference to this Declaration, which reference shall state the date of recording thereof and the instrument number of this Declaration as recorded;

(2) A statement that the provisions of this Declaration shall apply to the annexed territory in the manner set forth in sub-section (b) of this Section.

(d) The Notice of Annexation of Territory referred to in sub-sections (b) and (c) of this Section with respect to all or any portion of the property described in such Notice of Annexation of Territory may provide for all or any of the following:

(1) New land uses not provided for in this Declaration and such additional covenants, conditions, restrictions and reservations with respect to the use thereof as the Association, including Grantor, may deem to be proper for the development of such annexed property;

(2) With respect to land uses provided for in this Declaration, such additional or different covenants, conditions, restrictions and reservations with respect to the use thereof as the Association, including Grantor, may deem to be appropriate for the development of such annexed property and

(3) In the event that any land use is provided for in such Notice that is not similar to the uses permitted in this Declaration, as it applies to the initial property subject thereto, such new land use must be consented to by two-thirds (2/3) of the total number of votes in the Association attributable to membership, including Grantor, as set forth in Section 4.03 above.

Section 6.02 - Conveyance of Common Areas, Reservations of Easements and Rights-of-Way, Reclassification of Land Uses, Assignment of Powers.

(a) Grantor may transfer or convey to the Association and the Association shall accept:

(1) Any interest or easement in any Common Area designated as such upon any recorded Survey, Plot Plan or Graphic Description of Blackberry Mountain; and

(2) Any other easements reserved to Grantor under this Declaration. In addition, upon the affirmative vote of three-quarters (3/4) of the total number of votes in the Association attributable to membership, including Grantor, as set forth in Section 4.03 above, the Grantor may transfer any other real property or interest in real property to the Association. Such property may be subject to any or all of the following exceptions, liens and encumbrances:

(aa) The lien of real property taxes and assessments not delinquent;

(bb) Such easements and rights-of-way on, over or under all or any part thereof as may be reserved to Grantor or granted to any Owner;

(cc) Such easements and right-of-way on, over or under all or any part thereof as may be reserved to Grantor or granted to or for the benefit of the United States of America, the State of Georgia, or the County of Gilmer, any other political subdivision or public organization, any public utility corporation, any participating facility, or any area, for the purpose of constructing, erecting, operating and maintaining thereon, therein and thereunder, at that time or at any

time in the future (1) Roads, streets, walks, driveways, parkways and park areas; (2) poles, wires and conduit for the transmission of electricity for lighting, heating, power, telephone, television and other purposes, and for the necessary attachments in connection therewith; and (3) private sewers, sewage disposal systems, storm water drains, land drains and heating and gas lines or pipes and any and all equipment in connection therewith.

(3) The obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Georgia, the County of Gilmer or any other political subdivision or public organization having jurisdiction over such property or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation;

(4) Any other lien, encumbrance or defect of title of any kind whatsoever (other than of the type which would at any time or from time to time create a lien upon such property to secure an obligation to pay money).

(b) The Association may, with respect to any property or interest in property owned or acquired by it and which is not Common Area, change the classification thereof to "Common Area" by the unanimous action of the Board or by the vote and consent of fifty-one percent (51%) of the total number of votes in the Association attributable to membership, including Grantor, as set forth in Section 4.03 above.

(c) Any and all of the rights and powers vested in Grantor pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by Grantor to the Association and the Association shall accept the same, effective upon the recording in the Public Records by the Grantor of a notice of such delegation, transfer, assignment, conveyance or release.

#### Section 6.03 - Obligations of Owners, Avoidance, Termination.

(a) No Owner, through his non-use of any Common Area, Private Area or recreational facility, or by abandonment of his Parcel or by consolidation of two or more Parcels, may avoid or diminish the burdens or obligations imposed on him by this Declaration by virtue of his being an Owner.

(b) Upon the conveyance, sale, assignment of other transfer of a Parcel to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Parcel after the date of such transfer and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration following the date of such termination.

Section 6.04 - Division or Consolidation of Parcels. Any division of any Parcel, modification of Parcel boundaries or consolidation of two or more Parcels may be effected only with the prior written consent of the Association.

Section 6.05 - Term of Declaration. The covenants, conditions, restrictions and reservations of this Declaration, exclusive of all easements reserved by or on behalf of the Grantor or the Association, shall run with and bind the land subject to this Declaration, including any land annexed hereto pursuant to the terms hereof.

Section 6.06 - Amendments and Termination. This Declaration may be amended or terminated at any time and from time to time by a duly recorded amendment executed by the then holders of fifty-one percent (51%) of the total number of votes in the Association attributable to membership, including Grantor, as set forth in Section 4.03 above; provided that any provision of this Declaration calling for the approval or consent by such a percentage greater than said fifty-one percent (51%) may be amended, insofar as it specifies such a greater percentage, only by a duly recorded amendment executed by such greater percentage of the holders of such votes.

Section 6.07 - Discipline, Suspension of Rights. In addition to all other means of enforcement, the Association may, pursuant hereto, suspend the voting rights and the right by any Owner to use any Common Area or any recreational facilities for any period during which any assessment against his Parcel remains unpaid and, for a period not to exceed thirty (30) days, for any infraction of this Declaration or of the Blackberry Mountain Rules, after hearing by the Board of Directors of the Association.

Section 6.08 - Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now and hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 6.09 - Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall, in no wise, affect any other provisions which shall remain in full force and effect.

Section 6.10 - Notices, Documents, Delivery. Any notice or other document permitted or required by this Declaration to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows:

TO: The Grantor  
The Association, and  
The Design Committee

Blackberry Mountain  
Box 26, Star Route  
Whitestone, Georgia 30186

TO: Parcel Owner

At the address of Purchaser  
shown in the Contract for Sale  
and Purchase

Owner, by the Design Committee, or by Grantor by notice in writing, delivered to the Association; or by the Association, by notice in writing delivered to all Owners.

IN WITNESS WHEREOF, the Developer has executed this Declaration this  
2 day of July, 1981.

BLACKBERRY MOUNTAIN HOMES, INC.

By: Ernest Grimes  
President

(CORPORATE  
SEAL)

ATTEST:

Gilbert B. Dickey  
Secretary

STATE OF GEORGIA  
COUNTY OF GILMER

The foregoing instrument was acknowledged before me this 2nd day of July, 1981, by Ernest Grimes, President, and Gilbert B. Dickey, Secretary, of Blackberry Mountain Homes, Inc., a Florida corporation, on behalf of the corporation.

(NOTARY  
SEAL)

Susan Landrum  
Notary Public  
State of Georgia  
Notary Public, Georgia, State at Large  
My Commission Expires Feb. 22, 1984  
My Commission Expires: \_\_\_\_\_



Filed & Recorded 9-26-95  
at 1:30 PM Recorded 9-29-95  
Book 441 Page 280  
*[Signature]*  
Clerk of Superior Court

AMENDMENT  
TO  
BLACKBERRY MOUNTAIN  
DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS

THIS AMENDMENT to the Blackberry Mountain Declaration of Restrictions, Covenants and Conditions ("Declaration") is made this 4th day of March, 1995 by Blackberry Mountain Association, Inc., a Georgia corporation (the "Association"), the undersigned Members of the Association (the "Members") and Blackberry Mountain Management, Inc., a Georgia corporation (the "Grantor").

W I T N E S S E T H:

WHEREAS, the planned development community known as Blackberry Mountain (the "Development") consists of the lots or parcels more fully described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Grantor is the successor in title to Blackberry Mountain Homes, Inc., pursuant to that certain Quitclaim Deed dated April 1, 1994, recorded in Deed Book 434, Page 295, of the Gilmer County Records; and

WHEREAS, Grantor and Association desire to amend the Declaration to enable the Grantor and the Association to more efficiently and effectively maintain and administer said Development, for the preservation of the values and amenities in said Development; and

WHEREAS, pursuant to the Declaration and pursuant to the By-laws of the Association, the Association and Grantor did, at a duly called meeting on March 4, 1995, present to the Members of the Association the question of adopting the text of the written Amendment to Blackberry Mountain Declaration which was approved by the Board of Directors of the Association, at a duly called meeting February 4, 1995 and the Members of the Association approved said Amendment to Blackberry Mountain Declaration to be effective upon recordation thereof, and said Amendment to Blackberry Mountain Declaration is set forth hereinafter; and

WHEREAS, it relates to said Amendment to Blackberry Mountain Declaration, the date of the meeting of the Association at which such amendments were adopted was March 4, 1995; the date that notice of such meeting was given was February 10, 1995; the total number of votes of Members of the Association eligible to vote at said meeting was 171; the total number of votes required to constitute a quorum at the meeting of the Association was 88; the total number of votes necessary to adopt the Amendment to Blackberry Mountain Declaration was 45; and the total number of votes cast in favor of and the votes cast against the Amendment to Blackberry Mountain Declaration, respectively, were 84 in favor, 7 against, and 2 abstentions.



NOW, THEREFORE, pursuant to the actions of Grantor and the Association as aforesaid, this Amendment to Blackberry Mountain Declaration shall be recorded forthwith in the Office of Real Estate Records of Gilmer County, Georgia, and shall become effective upon recordation thereof, and Grantor and the Association declare and reaffirm that the Development continue to be maintained and administered pursuant to the Declaration as amended hereinafter set forth:

FIRST: Section 1.01 of the Declaration is hereby amended in its entirety to read as follows:

"Grantor/Developer" shall mean and refer to  
BLACKBERRY MOUNTAIN MANAGEMENT, INC., its  
successors and assigns.

All references to "Grantor" in the Declaration shall be changed to read "Grantor/Developer."

SECOND: The second sentence of the second paragraph of the Declaration is hereby deleted in its entirety and the following inserted in its place and stead:

Firm, but necessary, constraints will be used to maintain the integrity of the project as a community of authentic mountain homes.

THIRD: The declaration of Grantor in the last paragraph of the introduction to the Declaration shall be amended in its entirety to read as follows:

GRANTOR HEREBY DECLARES that all that portion of the real property described in Exhibit "A" hereto together with all additional properties which may hereinafter be annexed into the Development shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are imposed for the purpose of protecting the value and desirability of, and which shall run with, said real property and be binding on all parties having any right, title or interest therein, or any part thereof, their heirs, successors, administrators and assigns, and shall inure to the benefit of each Owner thereof. All of the property comprising the Development shall be held, sold and conveyed subject to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220 et. seq.

FOURTH: Section 3.01(a) of the Declaration is hereby amended in its entirety to read as follows:



The Design Committee shall consist of three (3) members or such other number as shall be fixed by resolution of the Board of Directors. No member shall be required to meet any qualifications for a membership on the Design Committee.

FIFTH: The second sentence of Section 3.03 of the Declaration is hereby amended in its entirety to read as follows:

The vote or written consent of a majority of the members shall constitute an act by the Design Committee unless the unanimous decision of its members is otherwise required by this Declaration.

SIXTH: The fourth and fifth sentences of Section 4.03 of the Declaration are hereby deleted in their entirety and the following inserted in their place and stead:

The Grantor/Developer, and its successors, substitutes and/or co-developers, shall be a Member of the Association and shall be entitled to cast a vote for each Parcel which Grantor/Developer owns. Furthermore, in addition to, and not in lieu of, the votes Grantor/Developer shall have with respect to its ownership of Parcels, Grantor/Developer shall retain and be entitled to cast an additional vote (the "Developer Vote") equal to 26% of the total number of votes in the Association attributable to membership, including the votes attributable to Grantor/Developer pursuant to its ownership of parcels. Grantor/Developer shall retain the right to cast the Developer Vote until such time as Grantor shall, by written instrument, deliver to the Association a relinquishment of such voting rights. Such relinquishment shall not affect Grantor/Developer's right to cast a vote for each Parcel it owns.

SEVENTH: The paragraph under Section 4.03 shall be redesignated as subparagraph (a) and new subparagraph (b) under Section 4.03 shall be added as follows:

The Board of Directors of the Association shall be authorized to approve and implement a plan whereby any Owner who owns more than one Parcel which are adjacent and contiguous to one another, only one of which may be improved with a residence, may request the Association and management company to revise their records to provide that such adjacent Parcels be treated as a single Parcel for purposes of voting rights and assessments, subject to such procedures, terms, conditions and restrictions as the Board of Directors may approve. Alternatively, the Board of Directors shall be authorized to approve and implement a plan whereby any Owner who owns more than one



Parcel which are adjacent and contiguous to one another, only one of which is improved with a residence, may replat such Parcels so that they are deemed one Parcel on the plat, subject to such procedures, terms, conditions and restrictions as the Board of Directors may approve, provided, however, that the replatting is done at Owner's expense and the Owner provides the Association and management company with appropriate documentation to reflect the change. Any multiple adjacent Parcels which are replatted by the Owner as one Parcel shall be deemed to be a single Parcel for purposes of voting rights and assessments.

EIGHTH: Section 4.08 of the Declaration is hereby amended in its entirety to read as follows:

Unless otherwise provided herein, the Association, through the Board of Directors and its duly authorized representatives, shall have the exclusive right to exercise the powers and authority referred to herein as provided under O.C.G.A. § 14-3-801(b).

NINTH: Section 5.02(e) of the Declaration is hereby amended in its entirety to read as follows:

No maintenance assessment shall be levied unless the Board has approved such assessment by a majority vote, such proposed assessment and the budget prepared pursuant to Section 5.02(a) have been submitted to the Association, and the Association at its next annual or special meeting, properly called and held in accordance with the Bylaws of the Association, has approved such proposed assessment and budget by a vote of not less than fifty-one percent (51%) of the total number of votes then present and voting at such meeting, including Grantor, as set forth in Section 4.03 above. If the Association does not approve such proposed assessment, Owners shall continue to pay the monthly maintenance assessment, pursuant to Section 5.02 of the Declaration, which was approved at the previous Association meeting until such time as the Association approves a new proposed assessment.

TENTH: New paragraph 5.02(g) to the Declaration shall be added as follows:

Notwithstanding any other provision hereof to the contrary, no maintenance assessment shall be charged, accrued, assessed, or payable as to any Parcel owned by Grantor/Developer until such time as the Grantor/Developer completes construction of a single family residence on any such Parcel receives a certificate of



occupancy and such residence is used or occupied regularly and continuously by the Grantor/Developer, its employees, agents, subcontractors or lessees.

ELEVENTH: The last sentence of Section 5.03 of the Declaration is hereby amended in its entirety to read as follows:

Such assessment must be approved at the next annual or special meeting of the Association, properly called and held in accordance with the Bylaws of the Association, by a vote of not less than fifty-one percent (51%) of the total number of votes then present and voting at such meeting, including Grantor, as set forth in Section 4.03 above.

TWELFTH: The second sentence of Section 5.05(a) of the Declaration is hereby amended in its entirety to read as follows:

If the Owner shall be deemed to be in default then the amount of the assessment not paid, together with the amount of any subsequent default, plus (i) a late fee equal to the greater of \$10.00 or ten percent (10%) of the amount of each assessment not paid, (ii) interest at ten percent (10%) per annum on each assessment thereof and any late charge, from the date the same was first due and payable, and (iii) costs of collection, including court costs, the expenses required for the protection and preservation of the Parcel, and reasonable attorneys' fees actually incurred, shall become a lien upon the Parcel or Parcels of such Owner at the time such amounts become due and payable, as provided under O.C.G.A. § 44-3-232(a). The Association may record such lien in the Public Records of Gilmer County, Georgia, with all costs of recordation thereof included in such lien amount.

THIRTEENTH: All other terms and conditions of the Declaration shall remain in full force and effect.



EXHIBIT A

BLACKBERRY MOUNTAIN DEVELOPMENT

Summary of Development Properties:

1. Blackberry Falls Colony, as reflected in Plat of Subdivision recorded in Plat Book 16, Page 1 of Gilmer County Records.
2. Pheasant Run Circle Colony, as reflected in Plat of Subdivision recorded in Plat Book 15, Page 124 of Gilmer County Records.
3. Limberlost Colony/Extension 1, as reflected in Plat of Subdivision recorded in Plat Book 13, Page 21 and Plat Book 14, Page 177 of Gilmer County Records.
4. Spring Lakes Colony, as reflected in Plat of Subdivision recorded in Plat Book 19, Page 97 and Plat Book 22, Page 146 of Gilmer County Records.
5. Limberlost Colony, as reflected in Plat of Subdivision recorded in Plat Book 10, Page 18 of Gilmer County Records.
6. Settler's Springs Colony, as reflected in Plat of Subdivision recorded in Plat Book 13, Page 5, Plat Book 10, Page 212, and Plat Book 10, Page 211 of Gilmer County Records.
7. High Meadows Colony, as reflected in Plat of Subdivision recorded in Plat Book 10, Page 2 of Gilmer County Records.

## BLUE RIDGE LAW

GRACE PROFESSIONAL BUILDING  
931 East Main Street - Suite A - Blue Ridge, Georgia

NOW, THEREFORE, as approved by the Members, this Amendment to the Declaration shall be recorded forthwith in the Clerk of Superior Court of Gilmer County's office and shall become effective upon recordation thereof, and the Association, as approved by the members, declares and reaffirms that the Development continue to be maintained and administered pursuant to the Declaration as amended.

The amendment is as follows:

Section 6.06 – Term of Declaration is amended in its entirety and restated as follows:

The covenants, conditions, restrictions and reservations of this Declaration, exclusive of all easements reserved by or on behalf of the Grantor or the Association, shall run with and bind the land subject to this Declaration, including any land annexed hereto pursuant to the term hereof, for a period of ten (10) years from the date this Declaration is first recorded in the Public Records, after which time the term hereof shall be automatically extended for successive additional terms of ten (10) years each unless a document, executed by the then Owners of not less than seventy five percent (75%) of the Parcels then subject to this Declaration, revoking this Declaration, is recorded prior to the expiration of the end of a ten year extension period.

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

**BLACKBERRY MOUNTAIN ASSOCIATION, INC.**

X *John D. Wheeler* (SEAL)  
By: *John D. Wheeler*  
Its: President

Attest: *Carolyn S. Sewell*  
By: *CAROLYN S. SEWELL*  
Its: Secretary

[CORPORATE SEAL]

Signed, sealed and delivered in the presence of:

*Jenne Weaver*  
Witness

*Rich B. Gray* (SEAL)  
Notary Public, my commission expires: \_\_\_\_\_



SIGNATURES CONTINUED ON NEXT PAGE

# BLUE RIDGE LAW

152 ORVIN LANCE DRIVE · SUITE B  
BLUE RIDGE, GEORGIA 30513

## ARTICLE VI – MISCELLANEOUS PROVISIONS

Section 6.01 – Use of Parcels by Owners and Guests is amended in its entirety and restated as follows:

### **Section 6.01 – Use of Parcels by Owners and Guests:**

#### **(NEW AMENDED)**

Blackberry Mountain subdivision is a single family residential community.

The use of any Parcel or Common Area by any Owner of a Parcel shall be limited to the Owner, his or her immediate family, and his or her Guests. Guests are those who use a Parcel or the Common Area and pay or give the owner nothing of value. Use of a Parcel or Common Area by a Guest is allowed only when the Guest is accompanied by the Owner.

Rental of a Parcel is allowed, with the minimum term for any rental to be no less than thirty consecutive days. A Parcel may be rented for four rental periods in a calendar year. Subletting or timeshares are not allowed.

The acts or omissions of any Guest or Renter are the responsibility of the Owner, and the use of any Parcel by an Owner, their Guests or Renters is subject to the Blackberry Mountain Rules and Declaration.

#### **(CURRENT)**

Except for the transitory and restricted use by guests of Owners, as limited below or by the association through the Blackberry Mountain Rules, the use of each Parcel, whether or not improved by a residence or other structure, and the use of any Common Area by the Owner or Owners of any parcel, shall be limited to twelve (12) persons at a time regardless of the number of owners of record of the Parcel. Such twelve (12) persons shall include married or unmarried adults and all minor children of such family or families. Should fee title ownership be taken by legal entity or more than twelve (12) persons, at the time of the original sale or any transfer thereof, the fee title owners shall designate in writing the persons, not to exceed twelve (12), who shall have the right to use the owned Parcel or any Common Area and who shall have any right to use any portion of the property as Owners. The holder or holders of legal title shall designate in writing the names of persons entitled to use, whether by lease, agreement, or otherwise, the Parcel and the Common Areas under this provision; and such designation shall not be changed more than three (3) times in any one calendar year without the express consent of the Association. Subject to Blackberry Mountain Rules from time to time in effect respecting the number of guests permitted for special occasions or by special permit of the Association and limitations on the use of Common Areas or facilities by guests, including denial of entrance or other privileges of guests who have abused or violated said Blackberry Mountain Rules, the maximum number of guests present on Blackberry Mountain at any one time by virtue of permission of all the Owners of any one Parcel shall not exceed twenty (20) persons; i.e., the total number of guests allowed on Blackberry Mountain at any one time or day shall not exceed twenty (20) persons for any one Parcel. The acts or omissions of any guests shall be deemed the acts or omissions of the Owner or Owners at whose invitation said guests are present to the end that such Owner shall be fully responsible for any violation of the Blackberry Mountain Rules or of this Declaration or of law committed by such guest.

Mail: Post Office Box 2670 Post Office Box 869  
Blue Ridge, Georgia 30513 Copperhill, Tennessee 37317

TELEPHONE: 706-632-1900 • (TN) 423-496-7000 • FACSIMILE: 888-632-9797  
www.blueridgelaw.com



**BLACKBERRY MOUNTAIN ASSOCIATION  
AMENDMENT TO BY-LAWS**

**AMENDMENT 1**


Pursuant to Article XIII of the Blackberry Mountain Association, Inc. Restated Bylaws 2010, the undersigned being the members of the Board of Directors of the Association, hereby adopt the following Amendment to the Blackberry Mountain Association, Inc. Restated Bylaws 2010.

RESOLVED, that Article V, Section 4 of the Association's By-laws be, and hereby is, deleted in its entirety and replaced with the following:


ARTICLE V. Section 4.


Quorum: Twenty (20) percent of the total number of votes of Members of the Association present in person or represented by written proxy, shall be requisite to, and shall constitute a quorum at all meetings of the Members for the transaction of business, except as otherwise provided by statute, by the Articles of Incorporation, or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented at such subsequent meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called.

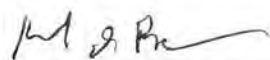
Adopted by affirmative vote of the undersigned members of the Board of Directors of the Association in a regular meeting conducted on December 3, 2016.

  
\_\_\_\_\_  
David Galusha, President

  
\_\_\_\_\_  
Carolyn Sewell, Treasurer

  
\_\_\_\_\_  
David Teffeteller, Vice President

  
\_\_\_\_\_  
Dolly Vantrepotte, Member at Large

  
\_\_\_\_\_  
Rich Baker, Secretary