



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.

Participant ID: 6407220327

BK 1461 PG 271 - 308

[SPACE ABOVE RESERVED FOR RECORDING DATA]

Return to: NowackHoward, LLC
One Alliance Center, Suite 1650
3500 Lenox Road, NE
Atlanta, Georgia 30326
Attention: RFD

STATE OF GEORGIA
COUNTY OF FANNIN

Cross Reference: Deed Book 777, Page 285
Deed Book 1113, Page 163
Deed Book 719, Page 444
Deed Book 1183, Page 136
Deed Book 1183, Page 152
Deed Book 801, Page 181
Deed Book 1100, Page 143
Deed Book 1249, Page 712
Deed Book 1355, Page 531

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
FOR BLUE RIDGE HEIGHTS**

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements is made this 20th day of October 2021 by Blue Ridge Heights, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant"), by and through its Manager/Member Donald R. Boykin.

W I T N E S S E T H

WHEREAS, Declarant prepared and filed of record that certain DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR BLUE RIDGE HEIGHTS, DECLARATION OF HOMEOWNERS' ASSOCIATION FOR BLUE RIDGE HEIGHTS, ROAD EASEMENT AND UTILITY EASEMENT AND EROSION CONTROL EASEMENT FOR BLUE RIDGE HEIGHTS SUBDIVISION, EROSION AND SEDIMENTATION AGREEMENT/HOLD HARMLESS/INDEMNIFICATION, WATER USE, MAINTENANCE AND EASEMENT AGREEMENT FOR BLUE RIDGE HEIGHTS, CONTROLLED ACCESS PROVISIONS FOR BLUE RIDGE HEIGHTS in Deed Book 777, Page 285, et seq., Fannin County, Georgia records, as amended in Deed Book 801, Pages 181-197, Deed Book 1100, Pages 143-159, Deed Book 1113, Pages 163-179, Deed Book 1183, Pages 136-151, Deed Book 1183, Pages 152-157; Deed Book 1249, Pages 712-716; and Deed Book 1355, Pages 531 - 537 ("Declaration"); and

WHEREAS, Blue Ridge Heights, LLC is defined as the Developer and Declarant in the Declaration; and

WHEREAS, the "DURATION AND AMENDMENT" provision of the Declaration provides that Declarant shall have the sole right to modify, delete and amend this document as it, in its sole discretion and judgment, deems necessary for the common welfare of owners in BLUE RIDGE HEIGHTS and/or the orderly economic development of the subdivision and/or for clarification or correction of same; and

WHEREAS, Declarant desires to amend the Declaration as authorized by the DURATION AND AMENDMENT provision of the Declaration and has determined in its sole discretion and judgment that this Amended

and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Blue Ridge Heights is necessary for the common welfare of owners in BLUE RIDGE HEIGHTS and for the orderly economic development of the subdivision; and

NOW, THEREFORE, the Declaration and all exhibits and amendments thereto are hereby stricken in their entirety and the following is simultaneously substituted therefor which shall be known as the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Blue Ridge Heights.

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ARTICLE 1. NAME & PROPERTY SUBJECT TO THIS DECLARATION

The name of the Community is Blue Ridge Heights, which is a residential property owners' development. The real property subject to this Declaration is located in the 7th District, 2nd Section of Fannin County, Georgia and is more specifically described in Exhibit "A" hereto, which is attached hereto and incorporated herein by reference.

ARTICLE 2. DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall be defined as set forth in this Paragraph 2. Otherwise, the terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Georgia Nonprofit Corporation Code.

Section 2.1. Act means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

Section 2.2. Architectural Review Board or ARB shall mean the committee established to exercise the Architectural Review powers set forth in Article 10 hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Review Board.

Section 2.3. Area of Common Responsibility means the Common Area, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the maintenance responsibility of the Association.

Section 2.4. Articles or Articles of Incorporation shall mean the Articles of Incorporation of Blue Ridge Heights Homeowners Association, Inc., filed with the Secretary of State of the State of Georgia.

Section 2.5. Assessments shall mean the sum charged to Lot Owners to be used for any purpose the Board of Directors determines will benefit the Owners, which includes, but is not limited to Common Expenses for the management of the affairs of the Association and insurance as provided herein, as well as the capital reserve fund the Board has established to cover major repair, maintenance, and replacement of Common Area, deficiencies, and unforeseen contingencies.

Section 2.6. Association shall mean Blue Ridge Heights Homeowners Association, Inc., a Georgia non-profit corporation, its successors, and assigns.

Section 2.7. Association Legal Documents means this Declaration and all exhibits hereto, the By-Laws, the Articles of Incorporation, the plats and all rules and regulations and architectural guidelines for the Association, all as may be supplemented or amended.

Section 2.8. Board or Board of Directors shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

Section 2.9. Builder shall mean any Person engaged principally in the business of construction of single-family residential dwellings for sale to individual homeowners to whom the Declarant sells or has sold one or more Lots for the purposes of constructing a Dwelling thereon.

Section 2.10. Bylaws shall mean the Bylaws of the Blue Ridge Heights Homeowners Association, Inc.

Section 2.11. Common Expenses means the expenses incurred or anticipated to be incurred for the

general benefit of all Lots, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Area as well as payment of debts owed by the Association. Examples of Common Expenses include, but are not limited to, the costs to maintain the roads, common fences, walls, and Common Area landscaping.

Section 2.12. Common Area means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Area includes but is not limited to portions of the Property described as “Overlook Drive”, “Blue Ridge Overlook Drive” (commonly known as “Blue Ridge Heights Drive”), , the well house structure and associated easements (but not including any wells, pumping equipment or piping) described that certain deed recorded in Deed Book 76, Pages 656-657 of the Fannin County land records (the “Well House Deed”), the entrance gate to the Community and associated entrance monuments and landscaping, “common area(s)”, “common drive(s)”, or as “street(s)”, “road(s)”, “utility service area(s)”, and all parts of the Property conveyed by the Declarant to the Association.

Section 2.13. Community shall mean and refer to the Property that comprises the Blue Ridge Heights development.

Section 2.14. Community-Wide Standard shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community as may be determined by the Board of Directors of the Association, in its discretion, from time to time.

Section 2.15. Declarant or Developer shall mean and refer to Blue Ridge Heights, LLC., a Georgia limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property in the Community for the purpose of development and/or resale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant. There shall only be one Declarant at any time.

Section 2.16. Declaration means this Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Blue Ridge Heights.

Section 2.17. Director means a member of the Association’s Board of Directors.

Section 2.18. Dwelling shall mean any building situated on a Lot designated and intended for use and occupancy as a single-family residential home.

Section 2.19. Effective Date shall mean the date that this Declaration is recorded in the Official Records.

Section 2.20. Electronic Document shall mean information created, transmitted, received, or stored by electronic means and retrievable in humanly perceivable form including, without limitation, e-mail, web pages, electronic documents, and facsimile transmissions.

Section 2.21. Electronic Signature shall mean a signature created, transmitted, received, or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.

Section 2.23. Lot shall mean and refer to any lot, whether or not improvements are constructed thereon, shown on a plat or plats of all, or part, of Overlook of Blue Ridge, Blue Ridge Heights and/or Overlook of Weaver Creek, as are now or hereafter recorded in the public records of Fannin County, Georgia. Each Lot consists of a Lot and all improvements thereon, including but not limited to, a Dwelling, driveways, and garages.

Section 2.26. Mortgage shall mean any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 2.27. Mortgagee or Mortgage Holder shall mean the holder of a Mortgage.

Section 2.28. Occupant shall mean any Person occupying all or any portion of a Lot in the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such Property. "Occupy" or "Occupancy" shall refer to the situation when a Person occupies a Lot for any period.

Section 2.29. Official Records shall mean the official land records of the Clerk of the Superior Court of Fannin County, Georgia.

Section 2.30. Owner means the record title holder of a Lot but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Lot shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Lot.

Section 2.31. Person shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

Section 2.32. Plats means those plats of the survey relating to Blue Ridge Heights; Overlook of Blue Ridge Phase 1, Phase 2-A and Phase 2-B; Overlook of Weaver Creek Phase 1 and Phase 2; and, once recorded, Overlook of Blue Ridge Phase III, consisting of 2.89 acres, as are now or hereafter filed in the Fannin County, Georgia land records, and any amendments or supplements thereto. All of the Plats of survey are incorporated herein by this reference.

Section 2.33. Property means that real estate, all of which is subject to the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference.

Section 2.34. Secure Electronic Signature shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

Section 2.35. Total Association Vote shall mean all of the eligible votes attributable to members of the Association as of the record date for such action.

Section 2.36. Turnover Date shall mean the date set forth in Section 3.2 hereof on which the Class "B" membership ends.

Section 2.36. Violator means any Owner who violates any provision of the Association Legal Documents and any Owner's family member, guest or Occupant who violates such provisions; provided, however, if an Owner's family member, guest or Occupant violates the Association Legal Documents, the Owner of the relevant Lot also shall be considered a Violator.

ARTICLE 3. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Each Owner of a Lot and Declarant shall be a member of the Association as provided in Section 3.2 below. This does not include persons who hold an interest merely as security for the performance of an obligation. The giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot owned in the Property. If more than one Person holds title to a Lot, the membership shall be shared in the same proportion as the title, but there shall be only one membership and one vote per Lot. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of the Lot. Membership may be transferred only in connection with the transfer of the Lot. If two or more Lots are combined via plat or survey recorded in the Fannin County land

records so as to serve as a one Lot for a Dwelling intended as a single-family residence, said combined Lots shall be treated as one Lot for membership purposes.

Section 3.2. Voting. The Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one equally weighted vote for each Lot owned, which vote may be exercised and suspended as provided in this Declaration and the By-Laws. When more than one (1) Person holds an ownership interest in any Lot subject to assessment, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one (1) Owner of a Lot attempts to cast it.

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

1. Upon the initial sale of all Lots and all real property subject to the Declaration owned by the Declarant.
2. At the expiration of 10 years from the recording of the Seventh Amendment to the Declaration recorded on July 6, 2020, in Deed Book 1355, Page 531-537, Fannin County land records.
3. The Declarant voluntarily relinquishes its Class B membership.

The date upon which the first of these events takes place shall be known as the "Turnover Date". Until the Turnover Date, the Association, the Board of Directors and Architectural Review Board shall be exclusively controlled by the Class B Members. From and after the Turnover Date, the Class "B" member shall be deemed to be a Class "A" member entitled to one vote for each Lot owned.

ARTICLE 4. ADMINISTRATION OF THE PROPERTY

Section 4.1. Association Rights and Obligations. The administration of the Property, the maintenance, repair, renovation, and operation of the Common Area and those acts required of the Association by this Declaration shall be the responsibility of the Association, and such administration shall be pursuant to the provisions of this Declaration and the By-Laws and Articles of Incorporation of the Association. The powers herein or elsewhere granted to the Association may be exercised by the Board of Directors, acting through officers, without any further consent or action on the part of the owners unless otherwise specifically provided herein. Notwithstanding the duty of the Association to maintain, repair, renovate, and operate the Common Area, the Association shall not be liable for injury or damage caused by any condition of the Common Area nor for injury caused by the elements, owners or other persons, nor shall any officer or director of the Association be liable to any owner for injury or damage caused by such officer or director in the performance of his duties unless due to the gross misfeasance or malfeasance of such officer or director.

Section 4.2. Powers of the Association. Unless otherwise provided, the Association, acting through its Board of Directors, shall have the right and authority to take all actions permitted by this Declaration, the Bylaws, and the Georgia Nonprofit Corporate Code. The Declarant shall have the right to appoint and remove all members of the Board of Directors, any officer or officers of the Association, and members of the Architectural Review Board, until the Turnover Date. The period during which Declarant possesses the unilateral right to appoint and remove all members of the Board of Directors described hereunder shall be referred to as the "Declarant Control Period."

Anything in the Association Legal Documents to the contrary notwithstanding, until the occurrence of the Turnover Date, no vote, decision, or action which requires the approval, agreement or a vote of a majority or more of the Members of the Association voting on said matter, irrespective of class, shall be effective or implemented until the Declarant has approved of or consented to same in writing directed to the Board of Directors of the Association.

ARTICLE 5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES AND EXPENSES

Section 5.1. General Allocations. Except as provided below, or elsewhere in the Association Legal Documents, the amount of all Common Expenses shall be assessed equally against all the Lots subject to assessment.

Section 5.2. Power to Impose. The Association shall have the power to levy assessments as provided herein. Assessments shall be used for any purpose the Board of Directors determines will benefit the Owners or the Property. The purposes for which assessments may be levied and used include, but are not limited to, the following:

1. Payment of operating expenses of the Association.
2. Lighting, improvement, maintenance and beautification of access ways and easement areas, and the acquisition, maintenance, repair and replacement of directional markers and signs and traffic control devices, and cost of controlling and regulating traffic on the access ways which are the responsibility of the Association.
3. Maintenance, improvement, and operation of drainage easements and systems.
4. Management, maintenance, improvement, and beautification of streets (the Association shall have sole control over and responsibility for road maintenance throughout the Property on the road system as originally designated on the Plats for the Property filed by the Declarant and as originally constructed by Declarant); and
5. Garbage collection and trash and rubbish removal, if any such services are provided by the Association as determined in the sole discretion of the Board.

Section 5.3. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant, and agree to pay to the Association all assessments and other charges levied pursuant to this Declaration and the By-Laws.

All assessments and charges levied against a Lot and its Owner, together with interest, costs and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs, and expenses) shall be: (1) a charge and a continuing lien against such Lot; and (2) the personal obligation of the Person who is the Owner of the Lot on the due date of the assessment. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance of the Lot.

The Association's lien provided for hereunder shall be perpetual upon the recordation of this Declaration in the Official Records. Such lien shall be superior to all other liens, except: (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (ii) the lien or charge of any first Mortgage recorded in the Public Records which was made in good faith and for value. The Association, in the Board's discretion, may record a notice of such lien in the Fannin County, Georgia land records evidencing the lien and this Declaration. Such lien, when delinquent, may be enforced by suit, judgment, and judicial and nonjudicial foreclosure. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving its lien.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may

include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the annual assessment shall be due and payable in advance on the first Day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the 15th Day following the due date unless otherwise specified by Board resolution.

Section 5.4. Computation of Operating Budget and Annual Assessment. To establish the annual assessment for a fiscal year, the Board of Directors shall prepare a budget covering the estimated costs of operating the Property for that fiscal year, which may include a capital reserve contribution. The Board of Directors shall also prepare annually an operating income and expense statement for the prior fiscal year. The Board shall provide the operating budget, annual Association assessment, the income and expense statement, and the capital reserve fund statement, if any, to the Owners not less than thirty (30) days before the due date of the annual assessment, or the first installment thereof.

The amount of the annual assessment shall not be increased more than one hundred and ten percent (110%) above the prior year's annual assessment without the approval of members representing two-thirds (2/3rds) of the eligible votes present in person or by proxy at a meeting duly called for such purpose, and the approval of Declarant. The annual assessment shall be established at \$650.00 per annum as of January 1, 2021.

If the membership disapproves a proposed budget including an increase of greater than one hundred and ten percent (110%) or the Board of Directors fails for any reason to determine a new budget, the budget currently in effect shall continue until a new budget is adopted as provided herein. Subject to the one hundred and ten percent (110%) limitation set forth above, the Board may adopt an adjusted budget, which may include an additional assessment amount, at any time during the year following the procedure specified above.

The budget shall not operate as a limitation on expenditures by the Board of Directors. The budget is merely an estimate of Common Expenses and contributions to reserve funds on which the Board establishes the annual assessment.

Section 5.5. Special Assessments. In addition to all other assessments and charges provided for herein, the Association may levy special assessments against all Owners for any purpose from time to time; provided, however, that with the exception of special assessments for emergency road maintenance which may be levied by the Board of Directors without a vote of the membership, any such special assessment must first be approved by at least a majority of the votes of those eligible Members voting either by: (1) written ballot in lieu of a meeting pursuant to the By-Laws; or (2) in person or by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting. Prior to the Turnover Date, any special assessment also requires the approval of Declarant. The quorum requirement for any vote to approve a special assessment shall be twenty five percent (25%) of the total eligible Association vote.

Section 5.6. Specific Assessments. In addition to all other assessments and charges provided for herein, the Board of Directors may levy specific special assessments ("Specific Assessments") as, in its discretion, it shall deem appropriate. By way of illustration, but not limitation, the Board may specifically assess for the following Common Expenses:

- (a) Any Common Expenses benefiting less than all of the Lots may be specifically assessed equitably, in the Board of Director's reasonable discretion, among all of the benefited Lots according to the respective benefit received.
- (b) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot(s) may be specifically assessed by the

Board of Directors against such Lot(s) based upon the conduct committed which occasioned any such Common Expenses.

- (c) Any Common Expenses significantly disproportionately benefiting all the Lots may be specifically assessed equitably, in the Board of Director's reasonable discretion, among all of the benefited Lots according to the respective benefit received.

Additionally, fines, costs of self-help, the Initiation Fee Assessment, Gate Administration Fee, Road Impact Fee, Water Fee and other charges assessed against less than all the Lots shall be deemed Specific Assessments.

Failure of the Board to specifically assess hereunder shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

Section 5.7. Delinquent Assessments. All assessments and charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and charges, the Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner's debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within 15 days of the due date, or such later date as may be provided by the Board of Directors:

- (a) a late charge equal to the greater of \$10.00 or 10% of the amount not paid may be imposed without further notice or warning to the delinquent Owner;
- (b) interest at the rate of 12% per annum shall accrue from the due date;
- (c) if paid in installments, the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing. If the Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any annual or special assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and
- (d) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law and/or foreclose its lien.

If assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Common Area are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Lot. In addition, if any assessment or other charge is delinquent for thirty (30) days or more, the Association shall have the right upon ten (10) days written notice, to suspend any utility services or other services paid for as a Common Expense, including, but not limited to, water, to that Lot until such time as the delinquent assessments, charges and all costs permitted pursuant to this Article, including reasonable attorney's fees actually incurred, are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service; including reasonable attorneys fees actually incurred, shall be an assessment against the Lot and shall be collected as provided herein for the collection of assessments.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. The obligation to pay

assessments is a separate and independent covenant on the part of each Owner, and no diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

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

The Association may bid for the Lot at any foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot subject to assessment shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Lot owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien of any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. Uncollected assessments due prior to the acquisition of title shall be deemed to be Common Expenses and the Board may assess them and collect them against the Owners of all Lots subject to the assessment, including against the acquirer of such Lot, its successors, and assigns.

Section 5.9. Initiation Fee Assessment Upon Transfer of Lots. In addition to all other assessments and charges provided for herein, upon any conveyance or transfer of a Lot, the purchaser or grantee thereof shall be assessed and be subject to a non-refundable, non-prorated Initiation Fee Assessment ("Initiation Fee Assessment").

The Initiation Fee Assessment shall be fifteen hundred dollars (\$1,500.00). The Initiation Fee Assessment shall not constitute an advance payment of the annual assessment. Initiation Fee Assessment shall constitute a specific assessment against such Lot, a continuing lien against such Lot, and a personal obligation of the Owner of such Lot.

Notwithstanding the foregoing, the Initiation Fee Assessment shall not apply to the sale, conveyance, or transfer of any Lot: (i) by the Declarant; (2) from an Owner to such Owner's spouse or legal heir; or (3) from an Owner to an Owner of another Lot.

Section 5.10. Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments and charges due and unpaid, including but not limited to any late charges, interest, fines, attorneys' fees or other charges against such Lot. The Association shall respond in writing within five business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any Mortgage on such Lot.

Section 5.11. Failure to Assess. Failure of the Board to establish assessment amounts or rates or to

deliver or to mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

Section 5.12. Capital Budget and Contribution. The Board of Directors may prepare an annual or multi-year capital reserve budget and may establish a capital reserve fund contribution based on such budget. Capital reserve budgets should take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

Section 5.13. Date of Commencement of Annual Assessments and Declarant's Obligation for Assessments. The Annual, Special and Specific Assessments shall commence as to each Lot upon the date of closing of the sale of the Lot to a Person other than the Declarant.. Declarant shall not be liable for the payment of any assessments, including Annual, Special or Specific assessments, on its Lots or Property. However, Declarant may, but shall not be obligated to, elect to contribute to the Association the difference between the amount of assessments levied on the Lots subject to assessments and the amount of the Association's actual expenditures during any fiscal year (a "Subsidy"). Any Subsidy may be treated, in the Declarant's discretion, as either a voluntary contribution or a loan from the Declarant to the Association. Subsidies may be evidenced by one or more promissory notes from the Association in favor of Declarant. Notwithstanding any language to the contrary herein or in the Bylaws, any loan from Declarant to the Association shall not require the approval of the members of the Association. The payment of a Subsidy in any fiscal year shall under no circumstances obligate Declarant to continue payment of a Subsidy in future years.

Section 5.14. Road Impact Fee. Owners shall pay a one-time \$500.00 Road Impact Fee due at the beginning of construction of the home or driveway, whichever comes first.

Section 5.15. Water Fees. Each Owner shall pay the following fees for water: (1) Recurring Water Service Fee: Determined contractually with Water Provider, but no less than \$420.00 per year; (2) Water Service Fee: \$1,500.00 at the time of closing of the sale of the Lot from Declarant; (3) Water Tap-On Fee: Set by Water Provider and estimated to be \$750.00, due at the time of meter installation and tapping onto the system, and payable to the Water Provider. As of the Effective Date, the Association's water system is subject to that certain Assignment of Water System in favor of Community Water Systems, Inc.(the "Water Provider") recorded on November 26, 2007 in Deed Book 820, Pages 22-24 in the Fannin County land records ("Water System Assignment"). In the event that full ownership of the water system reverts to the Association pursuant to the Water System Assignment, then the Association shall have the authority to charge Recurring Water Service Fee, Water Service Fee and Water Tap-On Fee, as well as any other costs associated with the provision of water to an individual Lot, to each Lot as a Specific Assessment.

ARTICLE 6. INSURANCE AND CASUALTY LOSSES

Section 6.1. Property Insurance. The Board of Directors shall obtain property insurance for all insurable improvements on the Common Area or required to be maintained by the Association. This insurance shall include, at a minimum, coverage for fire, wind, storm, hail, vandalism, malicious mischief, and civil commotion and if obtainable at a reasonable cost the coverage shall be in an amount sufficient to cover the full replacement cost of such insurable improvements. Alternatively, the Board may purchase "special form" coverage in like amounts.

Section 6.2. Association Liability Insurance. The Board shall obtain a public liability policy applicable to the Common Area covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, in their capacities as such, with a combined single limit of at least \$1,000,000.00.

Section 6.3. Directors' and Officers' Liability Insurance. The Board shall obtain a Directors and Officers liability insurance policy with a limit of at least \$1,000,000.00.

Section 6.4. Theft Insurance. The Board shall obtain insurance on Directors, Officers, employees, and other persons handling or responsible for the Association's funds, regardless of whether they are compensated by the Association. If reasonably available, the insurance shall cover at least one-quarter of the annual assessments from all members plus the reserve funds in the custody of the Association at any time during the term of the policy. The policy must provide that it may not be canceled, substantially modified or subject to non-renewal without at least 30 days prior written notice to the Association.

Section 6.5. Additional Association Insurance. The Board may obtain such additional insurance as it deems appropriate.

Section 6.6. Premiums and Deductibles on Association Policies. Premiums for all Association insurance shall be a Common Expense. The policies may contain reasonable deductibles. Deductibles shall not be subtracted from the face amount of the policies in determining whether the insurance equals the full replacement cost of the insurable improvements.

Section 6.7. Insurance on Lot and Dwelling. Each Owner is solely responsible for obtaining insurance on a Lot and Dwelling.

ARTICLE 7. DAMAGE AND DESTRUCTION

Section 7.1. In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

Section 7.2. Repair and Construction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, members representing at least two-thirds (2/3rds) of the Total Association Vote, voting either by: (1) written ballot in lieu of a meeting pursuant to the By-Laws; or (b) in person or by proxy at a duly called meeting of the members, vote not to remedy the damage. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

- (a) **Insurance Proceeds Insufficient to Fund Repairs and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall utilize funds in the Capital Reserve Fund to cover the shortfall. If Capital Reserve Funds are not adequate, the Board, without the necessity of a vote of the Association's members, may levy a special assessment against the Owners of all Lots. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.
- (b) **Insurance Proceeds Greater Than Cost of Repair and Reconstruction.** If the funds available

from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be allocated to the capital reserve fund.

- (c) **Disposition of Property Upon Determination not to Repair or Reconstruct.** In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be maintained as an undeveloped portion of the Property by the Association in a neat and attractive condition.

Section 7.3. Damage to Dwelling. All damage to a Dwelling shall be repaired or replaced within 6 months of the casualty, unless otherwise permitted by the Board or ARB. In the event it is decided the Dwelling will not be repaired or replaced, the Lot Owner shall, within six (6) months of the casualty, remove all portions of the Dwelling, fill in the foundation and landscape the Lot in accordance with a plan submitted to and approved in writing by the Board or ARB.

ARTICLE 8. CONDEMNATION

The Association, acting through the Board of Directors, shall represent the Owners in any condemnation proceeding or in any negotiations, settlements, and agreements with any condemning authority for such acquisition of the Common Area, or any part thereof. For such purpose, the Owners hereby appoint the Association as attorney-in-fact. Whenever any Common Area is taken by, or conveyed in lieu of condemnation to, any authority having condemnation or eminent domain power, the Board of Directors shall give notice thereof to each Owner.

If proceeds from the condemning authority are not sufficient to defray the Board's estimated or actual costs of reconstruction of any structures taken by condemnation, including, but not limited to, any professional fees and premiums for construction bonds the Board deems necessary, the Board shall utilize funds in the Capital Reserve Fund to cover the shortfall. If Capital Reserve Funds are not adequate, the Board, may levy a special assessment against all Owners without the necessity of a membership vote or compliance with any other requirements for approval of special assessments in this Declaration. Any surplus funds remaining after the reconstruction is completed shall be allocated to the capital reserve fund.

ARTICLE 9. ARCHITECTURAL STANDARDS

Section 9.1. Standards and Interpretation. The Board of Directors may establish, amend, and publish written Community Wide Standards and Design Guidelines for the construction of a Dwelling, for the installation and maintenance of landscaping, for the maintenance of and repair or modifications to a Dwelling or Lot that affect the exterior appearance thereof, and/or for the removal of a Dwelling.

Section 9.2. Architectural Control. The Architectural Review Board ("ARB") shall constitute a standing committee of the Board. For so long as Declarant owns any Lot or other part of the Property, Declarant shall have the sole right to appoint members of the ARB and the ARB shall have at least one (1) member. After the Declarant no longer owns any Lot or part of the Property, the ARB shall be made up of Owners of Lots and shall consist of the Board of Directors unless the Board of Directors delegates to other Persons the authority to serve on the ARB.

Section 9.3. Action Requiring ARB Approval. Except as otherwise provided herein, prior written approval of the ARB is required for the following:

- (a) Any site work, including but not limited to, staking, clearing, and grading a Lot; The construction of any Dwelling or other improvement on a Lot, including without limitation landscape, hardscape, garages, and driveways;

- (b) The demolition in whole or in part of a Dwelling or other improvement on a Lot;
- (c) Any change or alteration to a Lot or Dwelling that affects the exterior appearance of the Dwelling or Lot, including but not limited to (1) changes to the exterior color of a Dwelling or outbuilding, (2) changes to the shape of or materials on the exterior of a Dwelling or outbuilding, (3) changes to the placement or surface of a driveway, or (4) changes in landscaping visible from any street;
- (d) The erection, placement or posting of any object or thing on the Lot, during construction of a new Dwelling or thereafter, that affects the exterior appearance of the Lot, including but not limited to, fences, gates, columns, walls, pools, flags, signs, exterior lighting (including landscape lighting), statuary, wagons, fountains, decorative boulders, awnings, shutters, patio covers, decks, and gazebos.
- (e) Notwithstanding the foregoing, the following shall not require ARB approval: (1) addition or replacement of well-maintained live flowers or shrubs to existing landscape beds, and (2) addition of landscaping located within, and not visible from the exterior of, a concealed and fenced courtyard or privacy area adjacent to a residence, provided that the fenced courtyard area and/or privacy area has been approved by the ARB.

Provided, however, that notwithstanding anything to the contrary herein, this Article 9 shall not apply to Declarant's activities. Declarant shall not be required to obtain approval of the Board or ARB hereunder for any construction, modification, development or building activities.

Section 9.4. Application Process, Review and Appeal. The Board of Directors may establish procedures, forms, fees, conditions, and requirements for the submission of applications for new construction of a Dwelling or for modifications to a Dwelling or a Lot that affect the exterior appearance thereof. Such applications shall be in writing and, unless otherwise provided by the Board, submitted to the ARB. If the application requests any variance from provisions of this Declaration or any published Community-Wide Standards and Guidelines related to the exterior appearance of the Lot or Dwelling, the Owner must expressly identify such variance in the application. No approval issued hereunder shall authorize such a variance unless that variance is expressly identified in the application and specifically approved in writing by the Board.

In the ARB's sole discretion, the standards for approval of proposed construction or modifications submitted to it for approval hereunder may include, but not be limited to: (1) aesthetic considerations; (2) materials to be used; (3) compliance with this Declaration and the Community Wide Standards and Design Guidelines which may be established by the Board; (4) harmony with the external design of the existing Dwellings, Lots and structures, and the location in relation to surrounding structures and topography; and (5) any other matter deemed to be relevant or appropriate by the ARB. The ARB, if one is appointed, or otherwise the Board, shall be the sole arbiter of such application.

Section 9.5. Ruling on Application. If the ARB fails to approve or to disapprove an application within 30 days after the application and all required information has been submitted, the Owner submitting the application may issue written notice, via certified mail, to the Association President, informing the President of the Owner's intent to proceed with the construction or modification as identified in the application. Unless the Association issues a written disapproval of the application within 10 days of receipt of the Owner's notice, the approval will not be required, and this Article 9 will be deemed complied with as to the items specifically identified in the application. However, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any modification to a Lot or Dwelling that is otherwise in violation of the Association Legal Documents, or of any applicable zoning or other laws. Except as provided in this subparagraph, no approval of a construction on or modification to a Lot or Dwelling shall be valid unless issued in writing. Owners may not rely on any verbal approval or statements from any person as the approval required for any such modification.

Section 9.6. Appeal After Turnover Date. If the ARB does not consist of the Board of Directors, and the ARB disapproves any application or part thereof, an Owner may, in writing, appeal the ARB's decision to the Board. The notice of appeal must be sent to the Board by certified mail and received by the Board within 14 days from the date of the ARB's disapproval notice, otherwise the decision of the ARB shall become final, and all rights of appeal shall terminate. Within 45 days of receipt of a timely appeal, the Board shall approve, disapprove, or conditionally approve the Owner's application, and such ruling shall be final and binding on the Owner. Notwithstanding the foregoing, this Section 9.6 shall not be effective until after the Turnover Date. Prior to the Turnover Date, the decision of the ARB is final. There shall be no right of appeal until after the Turnover Date.

Section 9.7. Professional Consultants and Fees. The Board of Directors shall be authorized to charge, as a specific assessment, against any Owner and Lot other than the Declarant and any Lot owned by Declarant: (1) a reasonable administrative fee for review of modifications on, or submitted plans for, such Lot; and (2) reasonable fees for any architect, engineer or other professional consultant engaged by the Board to assist with review of modifications on, or submitted plans for, such Lot. The Board of Directors shall also have the authority to collect security deposits in reasonable amounts, as determined by the Board of Directors in its sole discretion, to protect against any damage to the Common Area caused by construction, including, without limitation, damage resulting from the transportation and use of construction materials, vehicles and equipment and extra-ordinary wear and tear. Costs for repair of such damage may be deductible from the security deposit and any additional expenses may be specifically assessed against the Lot under this Article.

Section 9.8. Limitation of Liability. Review and approval of any application pursuant to this Article may be made on any basis, including solely the basis of aesthetic considerations, and neither the Declarant, the Association, the Board of Directors nor the ARB shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations, and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, the ARB, nor member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or modifications to any Lot, nor may any action be brought against the Association, the Board of Directors, the ARB, or any member thereof, for any such injury, damage, or loss.

Section 9.9. Commencement and Completion of Modifications to a Lot. Once approved by the Board or ARB:

- (a) The construction of a new Dwelling approved hereunder or work on other improvements or modifications to a Dwelling or Lot approved hereunder must be commenced within six months from the date of approval, or such approval shall be deemed revoked unless the Board or ARB gives a written extension for commencing the work.
- (b) Unless otherwise agreed in writing by the Board or ARB, all construction of a Dwelling approved hereunder, including all landscaping, shall be completed in its entirety within one (1) year from the date of that construction commences. For purposes hereof, completion of all landscaping means that all landscaping on the Lot is completed in accordance with the approval granted by the ARB and all areas of the Lot not enclosed with a Dwelling are covered with natural growth, grass, sod, shrubs, trees and/or mulch. No bare dirt shall be exposed on a Lot except during construction.
- (c) Unless otherwise agreed in writing by the Board or ARB, all construction other than the construction of a new Dwelling shall be completed in its entirety within six (6) months from the date of commencement.
- (d) The date of commencement shall be the date of written approval of an application by the Board

or ARB. The completion date for a new Dwelling shall be the date a certificate of occupancy is issued by Fannin County.

This Section 9.9 shall not apply to Declarant's activities or any other activities not requiring approval under this Article 9.

Section 9.10. Enforcement. Any construction, alteration, or other work done in violation of this Article, the Declaration, the Bylaws or the Community Wide Standards and Design Guidelines shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Declarant, Board or any of their designees shall have the right, after ten (10) days written notice, to enter the Lot, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the Lot of the violating Owner.

In addition, upon any failure to comply with the requirements of this Article 9, the Board shall have the authority, in its discretion, to levy the following fines against the Lot and Owner: (1) a lump sum fine of \$2,500.00; or (b) a daily fine in an amount not to exceed \$50 per day for each day that violation continues. Provided, however, that before any such fine is levied, the Board shall comply with the notice procedures set forth in Section 15.3 hereof. Said fine shall be collectible as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article, the Design Guidelines and/or the Association Legal Documents may be excluded by the Board or Declarant from the Community, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this Section.

In addition to the foregoing, the Declarant and/or Board of Directors shall have the authority and standing on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board and/or ARB. Any and all reasonable attorney fees actually incurred by the Association to seek compliance with this provision may be assessed against the responsible Lot and collected as a Specific Assessment pursuant to this Declaration. This enforcement provision is in addition to the enforcement provisions set forth in Article 13.

Section 9.11. No Waiver of Future Approvals. The approval of the ARB and/or Board of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters later or additionally submitted for approval or consent.

Section 9.12. Variance. The Declarant, ARB and/or Board may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall: (a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Declaration; or (c) estop the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 9.13. Dwelling Quality, Size and Construction Specifications. All Dwellings subject to approval hereunder shall meet the following criteria as well as all construction criteria adopted and published by the Board of Directors as Community Wide Standards and Design Guidelines. Changes to the Community Wide

Standards and Design Guidelines shall become effective when published to the Owners.

- (a) Only one (1) single family Dwelling shall be erected on a Lot.
- (b) No Dwelling shall contain less than 1,800 square feet of heated living area on the main floor (not counting any footage in the basement of the home) or a minimum of 3,000 total square feet of finished, heated living area, exclusive of garages, covered walks, open and/or screened porches, patios, terraces, pool areas or other similar areas.
- (c) All exterior surfaces on a Dwelling shall be covered in a fashion to blend with the natural environment of the Property as is determined by the ARB in its sole discretion, including but not limited to stone combinations, wood or log. Log siding, cedar shake, and board and batten in earth tones are generally permissible, but no sheet materials (including but not limited to T-111). In general, only wood siding is allowed, although stucco in earth tones shall be allowed if approved by the ARB. All exterior foundation materials shall be “rocked” in a manner to be consistent with the remainder of the Dwelling. Notwithstanding anything to the contrary herein, the prior approval of the ARB is required for all exterior materials used on a Dwelling.
- (d) No mobile homes (fabricated on a chassis) are permitted on any Lot. Modular or prefabricated homes may be allowed but only if approved by the ARB in advance of installation in accordance with this Article 9. No prefabricated outbuildings are permitted on any Lot.
- (e) No structure of a temporary nature shall be used as a residence either temporarily or permanently (including but not limited to trailers, basements, tents, shacks, garages, or barns). Provided, however, the Owner of a Lot may erect an attached garage or outbuilding if the structure is fashioned in appearance and likeness to the design of the Dwelling and approved by the ARB. Any garage or outbuilding must be enclosed completely.
- (f) At all times during construction, driveways, landscaping, and the general appearance of a Lot shall be maintained in good order. To prevent mud and other debris from being tracked onto the street, a construction drive must be installed prior to beginning construction on the foundation of a Dwelling and must be maintained until the permanent driveway is completed.
- (g) All permanent drives, driveways, and parking areas must be surfaced in a fashion to minimize impact on subdivision roads at the point of intersection with same, must be concrete or asphalt, and must be completed within sixty (60) days after exterior construction is completed and before any sale of the Lot with a Dwelling. If the Owner shall default under his obligations described in this sub-Section, the Declarant or ARB may provide for the completion of the driveway and may enforce the same by filing of a lawsuit.
- (h) Lot Owners shall be responsible for the acts of their employees, sub-contractors, contractors, suppliers and other persons or parties involved in construction or alteration of the Lot. The Lot Owner’s responsibilities include, but are not limited to, ensuring the following:
 - 1. That the construction site is kept clean and free of debris and waste material.
 - 2. That stockpiles of unused materials are kept in a neat and orderly fashion.
 - 3. That a freestanding, enclosed toilet (Port-a-Pot) be installed on the Lot prior to beginning construction of the primary residence and removed as soon as the residence is completed.
 - 4. That no Lot clearing debris or waste material is disposed of by burning or burying on any Lot; with the sole exception that the Declarant may clear and burn in its discretion as it determines

necessary to improve the appearance of the Community.

- (i) Any damage to the Community roads or to other Common Area during construction of a new Dwelling shall be the responsibility of the Owner and the Association may specifically assess the costs of repair of any such damage back to the responsible Owner.
- (j) No structure shall draw power from a temporary pole except as necessary for initial construction of a Dwelling on a Lot. Following completion of a Dwelling on a Lot, power shall be hooked up permanently and all power must be run underground.
- (k) No Lot Owner may remove or top more than fifty (50%) percent of existing tree growth on a Lot, with said fifty (50%) percent to be distributed equally over the entire acreage of any Lot as approved by the ARB. Notwithstanding the foregoing, clear cutting may be permitted by the ARB for the purposes of original construction of the first Dwelling on a Lot to an area not to exceed fifteen (15) feet out (in all directions) from the foundation of the Dwelling structure, plus any attached decking (the "Clear Cut Radius"). The ARB may grant variances to allow for a greater area of clear-cutting, provided that as a condition of the granting of such variance the Owner of the Lot shall be charged, as a Specific Assessment due to the Association, a fee of \$1,000 per tree cut or topped outside of the Clear-Cut Radius.
- (l) All fuel storage tanks (including propane tanks), outdoor pools, utility lines (including but not limited to electrical, telephone, gas, water and cable television) or any other wire or pipe shall be installed and maintained underground.
- (m) Mail receptacles require approval of the ARB and must be constructed with similar material as used on the exterior of the main Dwelling.

ARTICLE 10. USE RESTRICTIONS AND RULES

Section 10.1. General. Each Owner shall be responsible for ensuring that the Owner's family, guests, tenants, and Occupants comply with all provisions of the Association Legal Documents. In addition to the following use restrictions, the Board of Directors may establish rules and regulations applicable to the Lots and the Common Area in accordance with the terms hereof and as specified in the By-Laws.

Section 10.2. Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a Lot may conduct ancillary business activities within the Lot so long as, in the opinion of the Board of Directors:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Dwelling on the Lot;
- (b) the business activity does not involve visitation of the Lot by non-domestic employees, clients, customers, suppliers, or other business invitees in greater volume than would normally be expected for guest visitation to a Lot without business activity;
- (c) the business activity is legal and conforms to all zoning requirements for the Lot;
- (d) the business activity does not increase traffic in the Community in excess of what would normally be expected for Lots in the Community without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

- (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (f) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as determined in the Board's sole and absolute discretion; and
- (g) the business activity does not result in a materially greater use of the Common Area or Association services.

The Board of Directors shall have the right to conclusively determine whether any one or more of the conditions set forth above in (a), (b), (c), (d), (f), or (g) exists in its sole discretion.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the renting of a Lot as permitted by Section 10.21 shall not be considered a business use.

Section 10.3. Occupants Bound. All provisions of the Declaration, Bylaws and of any rules and regulations, use restrictions or Community Wide Standards and Design Guidelines promulgated pursuant thereto which govern the conduct of Owners, and which provide for sanctions against Owners shall also apply to Occupants even though Occupants are not specifically mentioned. The Owner shall be responsible for ensuring that an Occupant, and the guests, invitees and licensees of an Owner or Occupant strictly comply with all such provisions.

Section 10.4. Subdivision of Lots and Property. Once sold by the Declarant, no Lot shall be altered in size or configuration, combined or subdivided; provided, however, that Declarant reserves the unconditional right to alter the size or configuration, subdivide, combine or create new Lots from existing Lots or any portion of the Property, and/or to replat any unsold Lot or portion of the Property, prior to its original sale and transfer to the first Owner of the Lot other than the Declarant, and in any such case any altered or newly created Lots shall be subject to this Declaration.

Section 10.5. Outbuildings. No tents, shacks, garages, carports, barns, tool sheds, dog houses, cages or coops or other structure shall be erected by any Owner or Occupant on any Lot without the prior written approval of the Board of ARB; provided, however, that an Owner may erect a tent in the back yard of a Lot for a temporary period of no more than seventy-two (72) hours in a sixty (60) day period. No temporary or permanent residence shall be established on any Lot in a trailer, mobile home, or other vehicle, or in a basement, tent, shack, shed, garage, barn, carport, log cabin or any other outbuildings.

Section 10.6. Vehicles and Parking. Vehicles may not be parked on streets, roads or anywhere else on the Common Area; provided, however, that the Board shall have the authority, in its discretion, to promulgate rules permitting temporary street parking. Vehicles shall be operated within the posted speed limits and shall obey all rules and regulations of the Association regarding use of streets. Unless otherwise provided by the Board during construction on a Lot, vehicles may only be parked on Lots in an enclosed garage or on a concrete or asphalt driveway approved by the ARB.

No inoperative cars, motorcycles, trucks, or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours in any one hundred and twenty (120) day period; provided however, that this provision shall not apply to any such vehicle being kept in an enclosed garage. There shall be no major repair performed on any motor vehicle on or adjacent to any Lots in the Community. All

vehicles parked anywhere in the Community outside of an enclosed garage must have current license plates.

In addition, the following restrictions apply to vehicles on any portion of the Property: (1) No inoperative cars, motorcycles, trucks or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours in any one hundred and twenty (120) day period; provided however, that this provision shall not apply to any such vehicle being kept in an enclosed garage; (2) No travel trailer, motor home, truck (excluding pick-up trucks used as a passenger vehicle and that have received a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), camper, or other similar vehicle shall be placed on the property at any time for a period in excess of forty-eight (48) hours in any one hundred and twenty (120) day period; provided however, that this provision shall not apply to any such vehicle being kept in an enclosed garage; and (3) No industrial, commercial or farm equipment or vehicles, including without limitation dump trucks, moving vans, step vans, buses and lowboy trailers, shall be allowed to park or remain on any Lot or any portion of the Community, except for so long as is necessary for use in connection with ongoing construction.

If any vehicle is parked in the Community in violation of this Section or the Association's rules, the Board or agent of the Association may tow or boot the vehicle. Provided, however, that in the event that the vehicle to be towed or booted is located on a Lot, the Board shall first provide twenty-four (24) hours' notice of its intent to tow or boot., Such notice shall: (1) be placed on the vehicle; (2) specify the nature of the violation; (3) warn of possible towing or booting; and (4) state the name and telephone number of a person to contact regarding the violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed or booted from the Lot in accordance with the original notice and without further notice. No notice shall be required to tow or boot a violating vehicle on the Common Area.

If a vehicle is towed or booted in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines.

Section 10.7. Fences. Except for such as may be placed, erected, or maintained by Declarant, no fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or ARB. The Board or ARB may issue guidelines detailing acceptable fence styles or specifications and locations. All applications for fencing shall be submitted in accordance with Article 9 of this Declaration. No barbwire or chain link fencing shall be allowed. Fencing must complement the residence, as determined by the ARB in its discretion, and be approved by the ARB pursuant to Article 9. With the exception of privacy fences approved by the ARB to surround an in-ground swimming pool, fences shall be no higher than four (4) feet.

Section 10.8. Antennas and Satellite Dishes. Except as provided below or otherwise approved by the Board of Directors, or as may be permitted under law, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors in any portion of the Community. Direct broadcast satellite ("DBS") antennas and multi-channel multi-point distribution services ("MMDS") one meter or less in diameter and television broadcast service antennas may be installed in accordance with rules and regulations of the Federal Communication Commission ("FCC") and the Association. Any such devices shall be installed in the least conspicuous location available on the Lot that permits reception of an acceptable quality signal. All such devices shall be promptly removed when no longer functioning or used.

Section 10.9. Trash Disposal/Garbage. No Lot shall be used or maintained as a dumping ground for rubbish or used for the storage of rubbish of any character whatsoever. No trash, garbage, or other waste shall be placed or stored on any Lot except in covered sanitary containers. Any such sanitary containers must be stored within the home or within an enclosure approved for such use by the ARB, which enclosure must be located at least five (5)

feet from any Lot line.

Section 10.10. Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept, parked, or stored on any part of the Common Area, without the prior written consent of the Association, except as specifically provided herein.

Each Owner assumes, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from any person's use of the Common Area unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents, or employees. Any recreational area or other areas or equipment located on the Common Area shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 10.11. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats and other common household pets may be kept provided that they are not kept, bred, or maintained for a commercial purpose. No animals may constitute a nuisance or cause unsanitary conditions, as is determined by the Board in its sole discretion. Pets must be kept on a leash and be under the control of a responsible Person at all times while on the Common Area. Breeds of dogs or other animals determined in the Board's sole discretion to be dangerous may not be raised, bred, or kept on any Lot. Any animals must be under the control of the owner at all times when in the Community.

Any Owner or Occupant who brings any pet unto the Common Area shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of such pet's actions while on the Common Area.

Section 10.12. Abandoned Personal Property. Personal property, except for personal property owned by the Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Area. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Area or on streets or other rights-of-way located on the Community in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Article, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

Section 10.13. Firearms. The discharge of firearms on any portion of the Community is prohibited.

Section 10.14. Signs. Except as may be provided for herein or as may be required by legal proceedings or any governmental construction permitting process, no signs, advertising posters, political placards, banners, or billboards of any kind shall be erected, placed, or permitted to remain in the Community without the prior written consent of the Board of Directors or ARB, other than: (1) such signs as are normally used to advertise a Lot for sale as are erected by Builders during the construction and sales period for a Dwelling on a Lot; (2) one professionally lettered "For Sale" sign no more than four square feet in size with wording and of a type used by real estate brokers in the area; and (3) a professionally prepared sign for address identification purposes in the design and specifications required by the ARB. In the event that the Board determines that any of the foregoing signs are not in keeping with the Community-Wide Standard the Owner of the Lot shall remove the sign within ten (10) days of receipt of written notice of the need to do so. The Board may establish additional rules regarding signs.

Section 10.15. Excavation. Except during the construction of permanent improvements thereon, no

Owner shall excavate or extract earth from any Lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots unless approved by the ARB.

Section 10.16. Outdoor Lighting. All outdoor lighting must be approved by the ARB and shall be so shaded and directed such that the light therefrom is directed to fall only on the same premises where light sources are located.

Section 10.17. Clotheslines and Miscellaneous Items. No utility trailer, junk, household appliances, or clotheslines are permitted to be kept, stored, or repaired in the Community, nor shall any garments, laundry, rugs or other articles be aired or dried on any Lot, except within an enclosed building so as not to be visible from other Lots or from any roads in the Community.

Section 10.18. Personal Recreational Vehicles. Personal recreational vehicles such as motorcycles, dirt bikes, all-terrain vehicles (“ATV”) or similar may not be used on the roads or any other Common Area and may only be operated on Lots in a safe manner at a moderate speed (not to exceed 15 miles per hour) and in such a fashion that they are not a nuisance to the comfort, convenience and peaceful enjoyment of adjoining Lots.

Section 10.19. Construction Hours. Construction on any Lot shall only be permitted during the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday. Construction shall be prohibited on Sunday.

Section 10.20. Rentals. Rentals of Lots with completed Dwellings shall be allowed for a period not to exceed thirty (30) consecutive days. The Lot Owner shall remain responsible for conduct of renters, guests, Occupants, and their compliance with the Association Legal Documents. Any Owner who rents a Lot after the Effective Date hereof shall annually provide the Board with written notice of the intention to rent the Lot as well as contact information for the Lot Owner and the Owner’s property manager handling the rentals of the Lot, if any, such contact information to include phone number, e-mail address and mailing address (“Rental Information”). The Rental Information shall be provided to the Board annually by such due dates as may be established by the Board and unless otherwise provided shall be due on January 1 of each year.

The Board of Directors shall also have the authority to charge, as a Specific Assessment, a gate administration fee (“Gate Administration Fee”) to any Owners renting a Lot to compensate the Association for the use of the gate system by renters/tenants of Lots in the Community and the additional administrative costs associated with such use. The Gate Administration Fee shall be an annual fee of twelve hundred dollars (\$1,200) per Lot that is rented during any year. The Board may set the due dates for payment of the Gate Administration Fee upon written notice to the Owners; provided, however, unless otherwise provided by the Board, the Gate Administration Fee shall be due on January 1 of each year. The Board may also permit the Gate Administration Fee to be paid in monthly installments and may charge any Owners paying on monthly installments an additional charge not to exceed ten dollars (\$10) per month to cover the additional administrative burden of monitoring, handling and accounting for the monthly payments. The Gate Administration Fee shall be imposed on a calendar year basis and shall not be pro-rated for Lots rented mid-year. The Gate Administration Fee imposed herein is non-refundable in whole or in part and constitutes a Specific Assessment hereunder.

Section 10.21. Access. No Lot or any portion thereof shall be used to provide access to any property located outside of the Community.

Section 10.22 Interpretation and Determination of Certain Violations. The Board shall have the authority to, in its discretion, interpret the terms and the restrictions and standards set forth in this Article and to determine whether a Lot, or an Owner or Occupant is or has been in violation of the restrictions and standards set forth in this Article. Such determination shall constitute a final determination that a violation has occurred or exists. Nothing herein shall be deemed to diminish or otherwise limit any discretion already provided for in any other Article of this Declaration. Further, all Owners and Occupants hereby acknowledge that the members of the Board of Directors will change over time and the Board’s interpretation and enforcement of the terms, restrictions

and standards set forth in the aforementioned Sections may vary over time, however, such variance shall not constitute a waiver by the Board of the right to interpret and enforce these Sections. No Board determination or interpretation provided for herein shall constitute a binding precedent with respect to subsequent Board determinations or interpretations.

ARTICLE 11 MAINTENANCE

Section 11.1. Association's Responsibility. The Association shall, at the Board's discretion, maintain and keep in good repair, and where necessary replace (subject to any insurance then in effect) all property within the Area of Common Responsibility, including but not limited to, the following parts of the Common Area: all landscaped areas; all roads shown on the Plats for the Community including Overlook Drive and Blue Ridge Overlook Drive (whether or not such roads are located on Common Area owned by the Association or a Lot), provided that Trump Lane and Creekview Lane are specifically excluded from the Area of Common Responsibility; any entrance sign; the entrance gates, entrance monument and any associated landscaping and lighting; the well house structure conveyed to the Association in the Well House Deed ((but not including any wells, pumping equipment or piping); and all street signs. Provided, however, that with the exception of the aforementioned roads located within the Property, the Association shall not have the obligation to maintain any easements included as part of the Common Area nor shall it have the obligation to maintain Creekview Lane although it shall have the right to do so in the Board's sole discretion.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Dwelling, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Area of Common Responsibility or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, family, invitee, or licensee for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Area. The Association shall not be liable to any Owner, or any Owner's Occupant, guest, or family member for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

In the event that the Association determines that a need for maintenance, repair, or replacement that is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his or her Occupants, family, guests, Lessees, or invitees, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs thereof shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

In performing its responsibility hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

Any maintenance or repair performed on or to the Common Area by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Area) shall be performed at the sole expense and risk of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair unless the Board in its discretion agrees in writing to reimburse some or all of the expense.

The Association shall have the right, but not the obligation, to maintain other property that is not owned by the Association or included within the Common Area, where the Board has determined that such maintenance would benefit the Owners. The property that the Association may maintain pursuant to the foregoing sentence specifically includes but is not limited to the property included within that certain easement granted to the Association pursuant to the Easement Agreement recorded on April 6, 2006 in Deed Book 711, Pages 69-72 of the Fannin County land records.

Section 11.2. Owner's Responsibility. Except as provided in Section 11.1 above, each Owner shall maintain and keep the Owner's Lot and Dwelling in good repair, condition and order, including but not limited to repairs; weeding pruning; trimming; keeping landscaped areas and planting beds in good condition and free of weeds; and proper upkeep of the wood/timber exteriors of any Dwelling or structure on the Lot, including regular pressure-washing and staining consistent with recommended industry maintenance practices for the type of wood/timber exterior on the Dwelling or other structure. Such maintenance shall be performed consistent with this Declaration and the Community Wide Standards and Design Guidelines. Any maintenance which involves an exterior change other than that undertaken by Declarant, including, without limitation, landscaping and planting or repainting of the exterior of improvements in a different color, shall require prior approval of the Board or the ARB pursuant to Article 9 of this Declaration; provided, however, that the Board may, in Community Wide Standards and Design Guidelines, or other rules, exempt certain types of maintenance and repair work from requiring prior approval.

Each Owner also shall be obligated:

- (a) To perform his or her responsibility in such manner as not to unreasonably disturb other persons in other Lots.
- (b) To promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible.
- (c) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, Occupants, tenants, invitees, licensees, or guests, with the cost thereof assessed as a specific assessment.

Section 11.3. Failure to Maintain.

- (a) If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair or replacement of items within his or her Lot for which he or she is responsible hereunder, the Association may give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. Such notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. The Owner shall have thirty (30) days from receipt of such notice within which to complete maintenance or repair on his own, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within thirty (30) days and diligently pursue completion thereafter. If the Owner does not undertake or complete the work on his own in a timely manner, the Association may complete the necessary maintenance, repair and/or replacement and all costs incurred by the Association to complete the work shall be assessed against the Owner as a specific assessment.
- (b) Notwithstanding anything in this Subsection, no prior notice of the Association's intent to perform the work described herein at the Owner's expense shall be required if the Board of

Directors determines that an emergency exists that requires immediate action.

- (c) These enforcement provisions are in addition to the enforcement provisions set forth in Article 13.

Section 11.4. Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board. The Board shall have the authority to, in its discretion, interpret the terms and the restrictions and standards set forth in this Article and to determine whether a Lot, or an Owner or Occupant is or has been in violation of the restrictions and standards set forth in this Article. Such determination shall constitute a final determination that a violation has occurred or exists. Nothing herein shall be deemed to diminish or otherwise limit any discretion already provided for in any other Article of this Declaration.

ARTICLE 12. EASEMENTS

Section 12.1. Easements for Use and Enjoyment.

- (a) Every Owner shall have a non-exclusive right, license, privilege, and easement of enjoyment in and to the Common Area, including but not limited to easement for ingress and egress over and across the streets, roads and walks in the Common Properties for all lawful purposes, and such easements shall be appurtenant to and shall pass with the title to every Lot, subject to:
 - (i) The Association Legal Documents;
 - (ii) The right of the Board, in its discretion, to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (iii) The right of the Association to suspend the voting rights of an Owner and the right of an Owner to use Common Area in the Community for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations; provided, however, that the Board may not deny ingress or egress to a Lot;
 - (iv) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area to a public agency, authority, or utility for the installation, maintenance, and inspections of lines and appurtenances for public and private water, sewer, drainage, cable television, telephone, electricity, gas and other utilities, and for completion of the development;
 - (v) The right of the Association, acting through the Board, in accordance with its Bylaws, to borrow money;
 - (vi) The right of the Association, acting through the Board, to grant and accept permits, leases, licenses, utility easements, and other easements, under, through or over the Common Area;
- (b) Notwithstanding the foregoing, the conveyance or mortgaging of any real property included within the Common Area shall require the consent of Declarant.

- (c) Any Owner may delegate his or her right of use and enjoyment in and to the Common Area and facilities located thereon to the members of his or her family, his or her tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of the Owner's Lot, if rented. No delegation shall relieve the Owner of responsibility for compliance with the Declaration and rules and regulations of the Community.

Section 12.2. Easement for Entry. In addition to the right of the Board to exercise self-help provided the Declaration, the Board shall have the right, but not the obligation, to enter upon any property (excluding entry into Dwellings) in the Community for the purpose of inspecting the property to ensure compliance with this Declaration, the By-Laws and the rules; (b) for emergency situations; (c) to respond to concerns affecting the safety and security of persons in the Community; and (d) as reasonably necessary for the proper maintenance and operation of the Community. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition after request by the Board or in an emergency situation. The entering party shall be responsible for any damage caused.

Section 12.3. Easement for Association Maintenance. There is hereby reserved to the Association and its designee, an easement and right across all portions of the Community, to allow the Association to fulfill the maintenance obligations described in this Declaration. This easement shall be exercised with a minimum of interference to the quiet enjoyment of the Owner's property, reasonable steps shall be taken to protect the Owner's property, and any Person causing damage to the Owner's property shall repair the damage at its sole expense.

Section 12.4. Easement for Declarant. The Declarant hereby reserves unto himself, his successors and assigns, all necessary licenses, rights, privileges and easements over, upon, under and across all Property, including but not limited to: (1) the right to use the said properties for right-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water or other public conveniences or subdivision utilities; (2) the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (3) the right to locate thereon wells, pumping stations and a water system; (4) the right and easement of ingress and egress for purposes of development and construction, including the rights to construct a road system through the submitted property to provide for orderly development of the project, location of said road system to be in its sole judgment and discretion, (5) the right to top or trim trees as necessary to enhance views and to grant easements for tree-topping/trimming privileges; and (6) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of the Community; provided, however, that said reservation and right shall not be considered an obligation of the Declarant to provide or maintain any such utility, development or service. Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the Community. Finally, the Declarant reserves the right to establish and continue to use any sales offices, signs, or parking spaces located in the Community in its effort to market the Community. The easements and rights-of-way herein reserved shall continue in existence in favor of the Declarant until such time as such rights are specifically and expressly relinquished by Declarant by reference to this provision. This provision may not be amended without the consent of the Declarant.

Declarant hereby grants to all future owners of any portion of the Community, their heirs, and assigns (and reserves for itself, its heirs, and assignments) easement for ingress and egress over and across all roads constructed by the Declarant serving the Community. These easements shall not be mere licenses but shall inure to the benefit of the future owners, their heirs, and assigns, as well as the Declarant, its heirs and assigns.

Section 12.5. Road, Utility and Erosion Control Easement. It is the express intent of Declarant to grant an easement for ingress and egress to each purchaser, their heirs, and assigns, of Lots or property within the Community, over and across the road system serving said subdivision. It is the express intent of Declarant to reserve for Declarant, Declarant's heirs, and Declarant's assigns, the same easement for ingress and egress.

Declarant reserves for itself, its heirs and assigns an easement over all property in the Community for the installation of utilities.

The easement is granted notwithstanding any error or omission in any individual conveyance to a purchaser of a Lot or property by the Declarant, which might fail to expressly grant or reserve such an easement.

Declarant has specifically recorded the Plats showing a defined road system developed for the mutual use and benefit of all Lot Owners, so that all may rely on the use of said road system and so that all may purchase in reliance on said survey.

Declarant retains an easement to construct, maintain, inspect, replace, or remove erosion control devices and areas (but in no way shall be required to construct, maintain, inspect, replace, or remove erosion control devices). Activities may include the improvements of waterways, providing of new waterways, removal of vegetation and/or trees, planting vegetation and/or trees, rip-rap/silt fences/barrier installation and the removal of silt. Said easement includes the right to clear and keep cleared all trees, roots, brush, and other obstacles and the construction, operation, and maintenance of erosion control devices and areas. Also retained is the right to cross said real estate for the purpose of conducting such corrective action on other Lots or areas and to move equipment to the required areas. Also included is the right to grow vegetation and provide for the future maintenance of said vegetation. Said easement shall not be a mere license but shall be a right running with the land and shall adhere to the benefit and burden of the Grantor, Grantees, their heirs and/or assigns.

Section 12.6 Water Use, Maintenance and Easement Agreement. There may be located in the Community a water system or county/city water servicing the submitted property and all other properties added by amendment. Declarant reserves for itself, its successors, and assigns, as well as for future water providers, a permanent and perpetual easement over all the Community for the purpose of installation, repair, maintenance, upgrades, and all other uses necessary for provision of water throughout the Community should the Declarant choose to install a water system.

All future Lot Owners in the Community shall have a permanent and perpetual right to contract for water service (and may obtain water service only from said water system) from the above-described water system at he rates established by the water provider.

Declarant reserves the right to transfer ownership of all or any part of the water system to any Lot Owner or to transfer the ownership of all or any part of the water system to a private water-providing company or municipality or to itself should it choose to continue ownership or operation of the water system. All provisions of these water system related terms shall transfer to the heirs, successor or assigns of the Declarant. As of the Effective Date, the water system is subject to the Water System Assignment.

Section 12.7 Association Easements. The Association, acting through the Board, shall have the right to grant and convey to any third party easements and rights-of-way in, on, over, and under the Common Area and any private streets located thereon for the purposes of constructing, erecting, operating, or maintaining thereon, therein, or thereunder, (1) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity and for lighting, heating, power, telephone, community television, radio and audio and antenna facilities and for other appropriate purposes; (2) public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes; and (3) any similar public or quasi-public improvements or facilities.

Section 12.8 Public in General. The easements and rights created in this Article do not, are not intended

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

ARTICLE 13. AUTHORITY AND ENFORCEMENT

Section 13.1. Compliance with Association Legal Documents. All Owners, Occupants and all of their family members, invitees, licensees, and guests shall comply with the Association Legal Documents. The Association, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Association Legal Documents directly against all Violators. However, if an Owner's family member, invitee, licensee, guest, or Occupant violates the Association Legal Documents, the Association, in its sole discretion, is permitted to enforce the terms of the Association Legal Documents against: (1) only the Owner; (2) only the violating family member, invitees, licensee, guest or Occupant; or (3) both the Owner and the violating family member, licensee, invitee, guest or Occupant. Notwithstanding anything herein to the contrary, the Owner of the Lot is always ultimately responsible for his or her own actions and the actions of all Owner's family members, Occupants, guests, licensees, invitees, and lessees (and their family members and guests) when in the Community.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed independently for relief from interference with his or her personal or property rights against a Person violating the Association Legal Documents. The Board of Directors may, in its discretion, require the aggrieved Owner or Occupant to independently pursue all available remedies under Georgia law against the Violator before the Association intervenes and commences enforcement action against such Violator.

Section 13.2. Types of Enforcement Actions. In the event of a violation of the Association Legal Documents, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot:

- (a) Suspend all Violators' rights to use the Common Area;
- (b) Suspend the voting rights of a violating Owner;
- (c) Impose reasonable fines against all Violators, which shall constitute a lien on the violating Owner's Lot;
- (d) Use self-help to remedy the violation;
- (e) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the Violator to cease and/or correct the violation; and
- (f) Record in the Fannin County land records a notice of violation identifying any uncured violation of the Association Legal Documents regarding the Lot.

Section 13.3. Suspension and Fining Procedure. Except as provided below, before imposing fines or suspending the right to use the Common Area or the right to vote, the Association shall give a written violation notice to the Violator as provided below.

- (a) **Violation Notice.** The written violation notice to the Violator shall:
- (i) Identify the violation, suspension(s) and/or fine(s) being imposed; and
 - (ii) Advise the Violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration of suspension(s) or the fine(s).

Notwithstanding the Violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

- (b) **Violation Hearing.** If the Violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a Violator fails to timely request a violation hearing, such Violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a Violator timely requests a violation hearing, the Violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.
- (c) **No Violation Notice and Hearing Required.** No violation notice or violation hearing shall be required to:
- (i) impose late charges on delinquent assessments;
 - (ii) suspend a violating Owner's voting rights if the Violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
 - (iii) suspend a Violator's right to use the Common Area if the Violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the Violator's right to use the Common Area shall be automatic (which shall allow the Association to tow and/or boot a Violator's vehicle located on the Common Area without complying with the Suspension and Fining Procedures described above);
 - (iv) engage in self-help in an emergency;
 - (v) impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the Violator; or
 - (vi) impose fines if the same violation occurs again on the same Lot, in which case fine(s) may be imposed on a per diem basis without any further notice to the Violator.

Section 13.4. Injunctions and Other Suits at Law or in Equity. All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Association Legal Documents. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a Violator to cease and desist and/or

correct any violation.

Section 13.5. Costs and Attorney's Fees for Enforcement Actions. In any action taken by the Association to enforce the Association Legal Documents, the Association shall be entitled to recover from the Violator and Lot Owner, any and all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Lot.

Section 13.6. Failure to Enforce. The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each Violator. The failure of the Board to enforce any provision of the Association Legal Documents shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure to enforce if the Board of Directors determines in its discretion that:

- (a) the Association's position is not strong enough to justify taking enforcement action;
- (b) a particular violation is not of such a material nature as to be objectionable to a reasonable person;
- (c) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;
- (d) the aggrieved Owner or Occupant asserting a failure of enforcement has not independently pursued all available individual remedies under Georgia law; or
- (e) the Association enforces only against an Owner for the violation of the Owner's family member, guest or Occupant or the Association does not enforce against the Owner and enforces only against the violating family member, guest, or Occupant.

ARTICLE 14. AMENDMENTS

Section 14.1. By Declarant. For so long as Declarant owns any Lot or real property subject to this Declaration, Declarant shall have the sole right to modify, delete and amend this Declaration as it, in its sole discretion and judgment, deems necessary for the common welfare of the Lot Owners and/or the orderly development of the Community and/or for clarification or correction of the same.

Section 14.2. Amendment to Subject to the Georgia Property Owners Association Act. The Declarant or the Board of Directors, with consent of the Declarant for so long as Declarant owns any Lot or real property in the Community, may amend this Declaration without obtaining any consent or agreement of the membership for the purpose of electing to be governed by and thereafter complying with the provisions of the Georgia Property Owners Association Act, O.C.G.A. § 44-3-220, *et seq.*

Section 14.3. Amendments to Comply with Law or Conform Documents. The Declarant or the Board of Directors, with consent of the Declarant for so long as Declarant owns any Lot or property in the Community, may amend this Declaration without obtaining any consent or agreement of the membership to comply with any applicable state, city, federal, or county law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between this Declaration, the Articles, and applicable laws.

Section 14.4. By the Association. Following the Turnover Date, in addition to the above, this Declaration may be amended with the agreement of Owners of Lots to which two-thirds of the votes in the Association appertain; provided, however, that until such time as Declarant owns any Lot or any real property in

the Community, the agreement shall be that of the Declarant and the Lot Owners of Lots to which two-thirds of the votes in the Association appertain, exclusive of any vote or votes appurtenant to any Lot(s) then owned by Declarant. Notice of a meeting, if any, at which a proposed amendment will be considered shall state that an amendment will be considered and describe the subject matter of the proposed amendment.

Section 14.5. Validity of Amendments. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. No Person shall be permitted to bring any legal action to challenge the validity of an amendment to this Declaration or the By-Laws more than one year after the recording thereof in the Fannin County, Georgia land records.

ARTICLE 15. GENERAL PROVISIONS

Section 15.1. Duration and Termination. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, Declarant and any Owner, their respective legal representatives, heirs, successors and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be: (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by Owners of at least seventy-five (75) percent of the Lots and Mortgagees holding Mortgages on Lots which have at least seventy-five (75) percent of the votes of Lots subject to Mortgages, and also signed by Declarant prior to the Turnover Date, has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to terminate such provisions; or (b) extended, renewed, modified, or terminated as otherwise provided herein or by applicable law.

Section 15.2. SECURITY. THE ASSOCIATION MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS THAT DIRECTLY OR INDIRECTLY IMPROVE SAFETY IN THE COMMUNITY. HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION IS NOT A PROVIDER OF SECURITY AND SHALL HAVE NO DUTY TO PROVIDE SECURITY FOR THE COMMUNITY. FURTHERMORE, THE ASSOCIATION DOES NOT REPRESENT THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE COMMUNITY AND COMMIT CRIMINAL ACTS NOR DOES THE ASSOCIATION REPRESENT THAT CRIMINAL ACTS WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SECURITY SYSTEM OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTIES, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS AND ALL OCCUPANTS OF ITS LOT THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS OR PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS OF LOTS, RESULTING FROM ACTS OF THIRD PARTIES.

Section 15.3. Erosion and Sedimentation Agreement/Hold Harmless/Indemnification. Declarant

and Lot Owners desire to ensure that their investment and the investment of any future heirs/assigns in the Community, including but not limited to the lands described in Exhibit "A" hereto, are protected and safeguarded from the ravages of erosion. For that purpose, and in consideration of \$10, the benefits to be derived by the Lot Owner and Declarant, and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant and Lot Owner (by acceptance of a deed in the Community) agree as follows:

Lot Owner shall be personally liable for any site work which results in run off soil, water, or any combination thereof on to the property of another in the Community, onto the roads in the Community, into any creeks or rivers, or onto the lands of another.

In the event that the site work of the Lot Owner is such as to cause run off or erosion or drainage onto the property of another in the Community, onto the Community roads, into creeks or rivers, or onto the lands of another, the Declarant or his authorized agent shall notify the Lot Owner of the alleged run-off, erosion and/or drainage. Said notification shall be mailed via certified mail to the Lot Owner address record tax address and Lot Owner shall have five (5) days from the mailing of said letter to correct the erosion/drainage. Declarant shall also attempt to notify the Lot Owner by telephone to facilitate the correction of the situation.

Lot Owner hereby grants a special lien against the Lot of said Owner in the Community in favor of Declarant. In the event that the Lot Owner does not address a problem in a manner reasonably designed to eliminate the problem, the Declarant shall have the right to enter onto the property of the Lot Owner after the five (5) day notice above-referenced and address the problem, and thereafter file a lien against the Lot in the fashion of a materialman's lien for work, all as if duly authorized and requested by the Owner. Said lien shall be filed in the same manner as materialman's liens are otherwise filed in the Office of the Clerk of Superior Court of Fannin County, Georgia.

Owner does hereby agree, for itself, its heirs, successors and/or assigns, to hold harmless and indemnify Declarant from any and all claims and debts, demands and actions, causes of action, suits, proceedings, agreements, contracts, judgments, damages, accounts, executions and any and all other claims and liabilities, whether or not well founded in fact or in law, and whether in law or equity, known and unknown, which may arise out of erosion in the Community and sedimentation control efforts (or lack thereof) by the Lot Owner, its heirs, executors, successors and assigns. The Lot Owner's obligation to hold harmless and indemnify shall include the Lot Owner, its heirs, executors, successors and assigns and any corporation held harmless/indemnified hereunder shall include any of its divisions, subsidiaries, or related companies, as well as its owners, employees, agents, subcontractors and/or vendors.

Nothing contained in this Section 15.3 shall be deemed to circumvent, take the place of or otherwise limit the authority of the Fannin County Development Office or other government regulatory officials and/or agencies.

Section 15.4. Dispute Resolution. Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director, or any agent of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

Section 15.5. No Discrimination. No action shall be taken by the Association or the Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability or any other basis proscribed by law.

Section 15.6. Implied Rights; Board Authority. The Association may exercise any right or privilege

given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

Section 15.7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 15.8. Indemnification and Limitation of Liability and Duties. The Association shall indemnify every member of the Board, ARB and other committee established by the Board or pursuant to the Association Legal Documents, and any officer of the Association, against all damages, liabilities, and expenses, including attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a party by reason of being or having been a member of the Board, ARB or other committee, or an officer of the Association, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and/or by-Laws of the Association, and Georgia law.

Notwithstanding anything to the contrary provided herein, nothing in the Association Legal Documents shall create or be deemed to create or imply a duty or otherwise obligate the Association (in any manner that could render it liable for damages in tort or breach of contract) to enforce or otherwise pursue any violation of the Association Legal Documents or to exercise its rights under any easement. The Association, the individual members of its Board of Directors, ARB, or other committee established by the Board or pursuant to the Association Legal Documents, and any volunteer, agent, property manager and/or employee of the Association (hereafter "Association Leader") shall not be liable for any injury or damage to any Lot Owner, or any lessee, Occupant, licensee, guest, family or third party (hereafter "Other Party") for any such failure. However, nothing herein will preclude the Association from recovering any money or property (or the value of same) that is misappropriated, converted, or otherwise possessed by anyone not entitled to same, the value of any business opportunity of the Association appropriated by another, the value of any improper personal benefit obtained by another, or for the types of liability set forth in O.C.G.A. §14-3-860 to 865.

Nothing in the Association Legal Documents shall create or be deemed to create a fiduciary relationship between a Lot Owner or any "Other Party" and the Association or any Association Leader.

In addition, neither the Association nor any Association Leader shall be liable for any injury or damage for any mistake of judgment, act, failure to act, breach of duty, or for the performance of or failure to perform any duty, obligation, or responsibility, arising out of or in connection with the Association Legal Documents, whether negligent or otherwise, except for his or her own individual willful misconduct.

In any litigation or other legal action or proceeding (judicial, administrative or otherwise, including alternative dispute resolution) between the Association or an Association Leader and any Unit Owner or any "Other Party" arising out of or in connection with the Properties, any portion thereof, the Association, and/or the Association Legal Documents, the Association or an Association Leader shall be entitled to recover his/her/it's reasonable attorney's fees incurred to the extent he/she/it prevails.

Section 15.9. Electronic Records, Notices and Signatures. Notwithstanding any other portion of this Declaration, records, signatures, and notices (including required attachments) shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the By-Laws shall govern the giving of all notices required by this Declaration.

Section 15.10. Preamble. The preambles and recitals of this Declaration are by reference made a part of this document as if fully stated herein in their entirety.

Section 15.11. Preparer. This Declaration was prepared by Rebecca F. Drube Esq., NowackHoward, LLC, One Alliance Center, Suite 1650, 3500 Lenox Road NE, Atlanta, Georgia 30326.

Section 15.12. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 15.13. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 15.14 Declaration Superiority. In the event of any inconsistency between the Articles of Incorporation and/or the Bylaws with this Declaration, the Declaration shall prevail.

ARTICLE 16. PROVISIONS RELATED TO LOTS 2 AND 3 OF OVERLOOK OF WEAVER CREEK

Notwithstanding anything to the contrary provided in this Declaration, the following provisions apply to Lots 2 and 3 of the portion of Blue Ridge Heights formerly known as Overlook of Weaver Creek Subdivision, Phase 1, such Lots further being more particularly described as Lot 2 and Lot 3 of Overlook of Weaver Creek, Phase 1 on a plat of survey dated January 4, 2006 and recorded in the Fannin County records in Plat Hanger D-315, Pages 4-6, which plat is hereby incorporated herein by reference (said Lots are hereby referred to as the "Weaver Creek Lots"):

- (a) Weaver Creek Lots shall pay no assessments of any type or nature to the Association and shall pay no road impact fees and shall only pay water fees as required by the water provider for the Community.
- (b) Weaver Creek Lots shall not be entitled to vote in or participate in Association affairs.
- (c) The portion of the subdivision road system crossing the Weaver Creek Lots shall be closed on both ends such that only the owners of the Weaver Creek Lots, their heirs and/or assigns shall be allowed to use said portion for day-to-day use.
- (d) The Association shall retain rights to use the road system on the Weaver Creek Lots for emergency use only, "emergency use" anticipated to be only for a situation where the primary Association access road leading from Highway 515 to the Community has become impassable, but the necessity for emergency use to be determined by the Fannin County, Georgia Fire Department, and should the Fire Department be unable or unwilling to state that emergency use is necessary, the Fannin County, Georgia Sheriff's department shall make such determination.
- (e) Although the restrictive covenants detailed in the Declaration shall continue to apply to the Weaver Creek Lots, only violation of restrictive covenants that impair the enjoyment or economic value of another Lot in the Community by its Owner shall be enforced against the Owners of the Weaver Creek Lots.

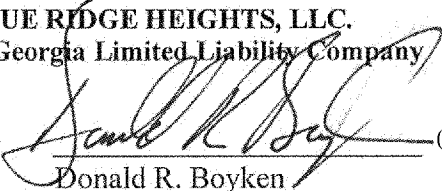
[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]


IN WITNESS WHEREOF, the undersigned Declarant has executed this Amended and Restated Declaration the day and year first above written.


This 20 day of October, 2021.

Sworn to and subscribed to before
me this 20 day of October
2021

BLUE RIDGE HEIGHTS, LLC.
A Georgia Limited Liability Company

By:  (SEAL)
Donald R. Boyken
Manager/Member


Witness


Notary Public
[Notary Seal]

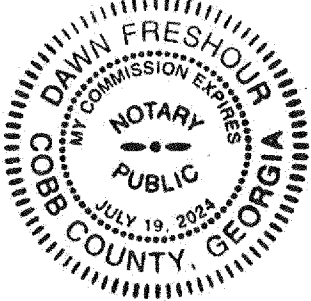


EXHIBIT "A"

The real property in the Property subject to this Declaration is located in Fannin County, Georgia, and consists of the following:

All that tract or parcel of land lying and being in the 7th District, 2nd Section of Fannin County, Georgia, being a part of Land Lots 45 and 64, being further described as OVERLOOK OF BLUE RIDGE, Phase 1, being 28.64 acres, more or less, as shown on that plat of survey dated July 11, 2006, and recorded in Plat Hanger E-10, Pages 1-5, Fannin County Deed Records.

TOGETHER WITH:

All that tract or parcel of land lying and being in the 7th District, 2nd Section of Fannin County, Georgia, being a part of Land Lots 63 and 64, being further described as OVERLOOK OF WEAVER CREEK, Phase I, being 20.40 acres, more or less, as shown on that plat of survey dated January 4, 2006, and recorded in Plat Hanger D-315, Pages 4-6, Fannin County, Georgia records.

TOGETHER WITH:

All that tract or parcel of land lying and being in the 7th District and 2nd Section of Fannin County, Georgia and being part of Land Lot 64, and being more particularly described as Lot 19, Lot 20, Lot 21, Lot 22, and Lot 23, as shown on that plat of survey prepared for OVERLOOK OF WEAVER CREEK, Phase 2, said plat of survey dated July 11, 2006 and recorded in Plat Hanger E-107, Pages 3-4, Fannin County, Deed Records.

TOGETHER WITH:

All that tract or parcel of land lying and being in the 7th District, 2nd Section of Fannin County, Georgia, being a part of Land Lot 64, being further described as OVERLOOK OF BLUE RIDGE, Phase 2A, being 8.84 acres, more or less, as shown on that plat of survey dated June 11, 2020, and recorded in Plat Book F227, Pages 3-4, Fannin County Deed Records.

TOGETHER WITH:

All that tract or parcel of land lying and being in the 7th District, 2nd Section of Fannin County, Georgia, being a part of Land Lot 64, being further described as OVERLOOK OF BLUE RIDGE, Phase 2B, being 4.63 acres, more or less, as shown on that plat of survey dated November 2, 2020, and recorded in Plat Book F241, Pages 5-6, Fannin County Deed Records.

TOGETHER WITH:

OVERLOOK OF BLUE RIDGE PHASE 3

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 64 AND 65 OF THE 7TH DISTRICT IN THE 2ND SECTION OF FANNIN COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A ¾" BOLT AT THE NORTHEAST CORNER OF LAND LOT 64, THENCE S 77°18'01"W, A DISTANCE OF 2341.22 TO A POINT IN THE CENTERLINE OF OVERLOOK DRIVE, SAID POINT BEING THE NORTHEAST CORNER OF THE

PROPERTY HEREIN DESCRIBED AND **THE TRUE POINT OF BEGINNING**; THENCE LEAVING SAID CENTERLINE, S 09°34'06"E, A DISTANCE OF 231.13 FEET TO A POINT IN THE CENTERLINE OF A 10' DIRT ROAD, KNOWN AS PONY SHED TRAIL; THENCE ALONG AND WITH SAID CENTERLINE THE FOLLOWING ELEVEN COURSES:

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 96.94 FEET, SUBTENDED BY A CHORD S 69°35'03"W, A DISTANCE OF 95.64 FEET, HAVING A RADIUS OF 170.62 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 123.47 FEET, SUBTENDED BY A CHORD S 58°47'23"W, A DISTANCE OF 123.07 FEET, HAVING A RADIUS OF 441.07 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 99.32 FEET, SUBTENDED BY A CHORD S 53°26'48"W, A DISTANCE OF 98.54 FEET, HAVING A RADIUS OF 228.11 FEET TO A POINT; THENCE S 71°09'59"W, A DISTANCE OF 42.16 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 66.56 FEET, SUBTENDED BY A CHORD N 83°38'58"W, A DISTANCE OF 64.89 FEET, HAVING A RADIUS OF 85.49 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 60.76 FEET, SUBTENDED BY A CHORD N 43°29'49"W, A DISTANCE OF 60.16 FEET, HAVING A RADIUS OF 125.33 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 68.37 FEET, SUBTENDED BY A CHORD N 25°14'47"W, A DISTANCE OF 68.07 FEET, HAVING A RADIUS OF 211.55 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 71.17 FEET, SUBTENDED BY A CHORD N 07°15'59"W, A DISTANCE OF 71.10 FEET, HAVING A RADIUS OF 478.09 FEET TO A POINT; THENCE ALONG THE ARC OF A CHORD TO THE LEFT A DISTANCE OF 104.78 FEET, SUBTENDED BY A CHORD N 07°05'16"W, A DISTANCE OF 103.82 FEET, HAVING A RADIUS OF 222.45 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 40.38 FEET, SUBTENDED BY A CHORD N 67°40'29"W, A DISTANCE OF 39.30 FEET, HAVING A RADIUS OF 50.22 FEET TO A POINT; THENCE N 84°28'26"W, A DISTANCE OF 40.70 FEET TO A POINT AT THE INTERSECTION OF CENTERLINES OF PONY SHED TRAIL AND OVERLOOK DRIVE; THENCE LEAVING SAID CENTERLINE OF PONY SHED TRAIL AND ALONG AND WITH SAID CENTERLINE OF OVERLOOK DRIVE THE FOLLOWING SIX COURSES:

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 112.08 FEET, SUBTENDED BY A CHORD N 65°17'48"E, A DISTANCE OF 110.13 FEET, HAVING A RADIUS OF 173.26 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 70.95 FEET, SUBTENDED BY A CHORD N 88°58'30"E, A DISTANCE OF 70.38 FEET, HAVING A RADIUS OF 161.90 FEET TO A POINT; THENCE S 75°49'44"E, A DISTANCE OF 39.64 FEET TO A POINT; THENCE S 70°03'32"E, A DISTANCE OF 64.54 FEET TO A POINT; THENCE ALONG THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 125.63 FEET, SUBTENDED BY A CHORD N 83°13'21"E, A DISTANCE OF 123.54 FEET, HAVING A RADIUS OF 198.57 FEET TO A POINT; THENCE N 61°54'40"E, A DISTANCE OF 132.55 FEET TO **THE TRUE POINT OF BEGINNING**

SAID TRACT OR PARCEL OF LAND CONTAINING 2.89 ACRES, MORE OR LESS