



## NOTICE REGARDING COVENANTS AND/OR RESTRICTIONS

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

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Gainesville, GA 30503

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GEORGIA  
PICKENS AND GILMER COUNTIES

DECLARATION OF  
COVENANTS, RESERVATIONS AND RESTRICTIONS  
Of  
**Falling Waters Subdivision**

This Declaration of Covenants, Reservations and Restrictions ("the Declaration") made this the 8<sup>th</sup> day of April, 2014, by HIGHLAND FALLS, LLC a Delaware limited liability company, hereinafter called "Declarant".

WHEREAS, by deed dated 8 February, 2013 and recorded in Book 1786 at Page 24 in the office of the Clerk of Superior Court, Gilmer County Georgia, and in Book 995 at Page 362 in the office of the Clerk of Superior Court of Pickens County, Georgia, the undersigned Declarant purchased certain real property, both developed and undeveloped, portions of which had heretofore been subjected to certain Declarations recorded in Book 805 at Page 1 in Pickens County, Georgia and in Book 1438 at Page 8 in Gilmer County, Georgia, (the "Previous Declarations") together with certain other lots within the same section which have since been sold to individual owners, and;

WHEREAS, on account of certain issues which arose connected with the timing of the Previous Declarations, and the wording thereof, the Previous Declarations may not have been effective to encumber the real estate described therein, and in particular the same may not have been effective to bring the said real estate within the Highlands at Clear Creek Home Owners Association for enforcement of and administration of such restrictive covenants, and said Association has taken the position that lots described in the Previous Declarations are not eligible for membership in the Highlands at Clear Creek Homeowners Association, and;

WHEREAS, by deed dated 8 February and recorded in Book 1786 at Page 24 of the Gilmer County Registry and in Book 990 at Page 264 of the Pickens County Registry, the undersigned was assigned and conveyed all and every right reserved to the Declarant respecting the aforementioned Declarations, and;

WHEREAS, by the terms of the aforesaid Declarations the undersigned Declarant has the right to unilaterally amend the Declarations so long as such amendments do not materially affect the use and enjoyment of the lots included within such Declarations, and;

WHEREAS, Declarant has previously recorded a Declaration covering only so many of the lots subject to the Previous Declarations as have been conveyed to this Declarant, and has formed the Falling Waters Residential Association, Inc. to administer such Declaration, and;

WHEREAS, the existence of uncertainty relative to the effectiveness of the Previous Declarations, and the possible existence of varying Declarations within the same section of the community make it beneficial to each of the lot owners that one covenant regime be established which is substantially similar to all Previous Declarations, but which

brings any inconsistent terms, if any, contained therein into accord one with the other so that the restrictions may be applied throughout the entire development in a consistent and reasonable manner. The present amendment and restatement is therefore within the authority of the Declarant in that the substantive rights of all Owners are advanced rather than adversely affected.

NOW THEREFORE, in order to provide a comprehensive document relevant to the establishment of an aesthetically pleasing development, and for the benefit of the Declarant and each of the lot owners within the community, and in anticipation that the Declarant will in due course turn over all Declarant rights to the Falling Waters Residential Association, Inc. the undersigned Declarant intends by this declaration to terminate the effectiveness of all of the Declarations mentioned above, and to substitute these Covenants, Reservations and Restrictions in lieu of all such previous Declarations, including but not limited to the Declarations recorded in Book 805 at Page 1 of the Pickens County Registry and Book 1438 at Page 8 of the Gilmer County Registry, and in Book at Page which Declarations shall hereafter be null and void and shall be replaced by the terms hereof. The real property described in and referred to in Article I hereof is and shall be held, transferred, sold and conveyed subject to this Declaration.

#### ARTICLE I Falling Waters Subdivision

The real property which is and shall be, held, transferred, sold and conveyed subject to this Declaration is located in Pickens and Gilmer Counties, Georgia, is known as Falling Waters at Georgian Highlands Subdivision, (Falling Waters) and is more particularly described as follows:

Located in Pickens and Gilmer Counties, Georgia, and being all of the property conveyed by deed dated and recorded in Deed Book 1816 at Page 471 and Deed Book 1816 at Page 471 of the Pickens and Gilmer Counties Registry.

Parcel One: ALL THAT TRACT or parcel of land lying and being in Land Lots 32, 33, 39, 40, 41, 70-75, and 107, 5<sup>th</sup> District, 2<sup>nd</sup> Section, Gilmer County Georgia, as shown on plat of Survey for Waterfront Group by Mark Chastain Georgia Registered Land Surveyor No#2718, recorded in Plat Book 55, Page 283, filed 01/28/2013, Gilmer County, Georgia records, said plat being incorporated herein and made a part hereof by reference thereto;

Parcel Two: ALL THAT TRACT or parcel of land lying and being in Land Lot 74-75 and 106 & 107, 5<sup>th</sup> District, 2<sup>nd</sup> Section, Gilmer County, Georgia, and Land Lot 111, 5<sup>th</sup> District, 2<sup>nd</sup> Section, Pickens County, Georgia, being lots 221 through 261 as shown on plat of Survey by Mark Chastain Georgia Registered Land Surveyor as recorded in Plat Book 51 at page 68-77 and revised in Plat Book 55 at Page 179-180, Gilmer County, Georgia Records, said plat being incorporated herein for the purpose of description;

Such property described above is sometimes referred to herein as the "Subdivision" or "Development." Each individual numbered lot as shown on the above described plat, as amended is referred to herein as a "Lot."

#### ARTICLE II Definitions

1. "Association" or "Residential Association" means the Falling Waters Residential Association Inc, a Non-Profit Corporation organized under the laws of the State of Georgia. The membership of the Association shall consist exclusively of all the lot owners and the Declarant. The Association shall appoint an Architectural Control Committee ("ACC") to perform the functions set out herein.
2. "Neighborhood Committee" means a committee elected or to be elected within each discrete section of Falling Waters Subdivision, to which certain limited authority is or may be delegated from the Association for the purpose of exercising architectural and design control for new construction, and enforcing restrictions and regulations contained herein or promulgated by the Association.
3. "Declarant" is Highland Falls, LLC, a Delaware limited liability company, their successors and assigns. All special declarant rights as herein defined may be transferred only by written instrument recorded in Pickens and Gilmer Counties, Georgia, executed by transferor, or by other means in accordance with Georgia law.
4. "Common Area" or "Common Element" means any real estate within Falling Waters Subdivision, other than a lot, owned by the Association, and specifically includes rights of way held for, and roadways

- constructed for the general use of lot owners, and any associated parking areas or other areas intended for the common use of all the lot owners. During the period of Declarant control, the Declarant shall retain the exclusive right and power to modify, decrease or add to the Common Areas or Common Elements so long as access to any previously conveyed lot is not impaired, and so long as the rights of lot owners to enjoy their own lots are not materially affected by such change.
5. "Limited Common Area" or "Limited Common Element" means any real estate or interest therein that is held and used, or held for the use of some but not all lot owners. In particular, Limited Common Elements, if any, shall include but not be limited to the common driveways accessing more than one lot.
  6. "Common Expense" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
  7. "Common Expense Liability" means the liability for common expenses allocated to each lot as permitted by this declaration, or otherwise by law.
  8. "Lot" means an individually numbered lot shown on recorded plats as referenced, together with any septic easement or right of way to access such easement, either specifically conveyed with such lot or shown on a recorded plat as being appurtenant to the Lot.
  9. "Lot Owner" means the declarant or other person who owns a lot, but does not include a person having an interest in a lot solely as security for an obligation.
  10. "Special Declarant Rights" means rights reserved for the benefit of the Declarant including, without limitation, the right (i) to complete improvements indicated on plats or referenced in disclosures; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements or across lots as designated on recorded plats for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to appoint or remove any officer or executive board member of the association, (vi) to subject the Property, and each of its lots (whether or not the same may have been conveyed to individual owners) to a master association, or to join the Association with any other new or existing property owners association for the purpose of common maintenance of roadways or sharing of other common amenities or (vi) to amend the subdivision plat, or this Declaration during the period of Declarant control, so long as such amendment does not unreasonably affect the usefulness or enjoyment of lots which have been previously conveyed by changing the restricted residential nature of such property.

### ARTICLE III Owners Easement of Enjoyment

Every owner of any lot shall have a right and easement of enjoyment in and to the common areas, including roadways, easements and rights appurtenant to the Property described in Article I, which shall be appurtenant to and shall pass with the title to every lot, subject to the following reservations:

1. Easements, restrictions, reservations and rights of way as may actually exist, including but not limited to utility easements, setbacks, restrictions and subdivision roadways, including common driveways shown on the subdivision plats or set out in this Declaration.
2. Rights reserved herein to the Residential Association, including but not limited to the right to impose reasonable regulations on the use and enjoyment of the lots and of the common areas, the right to dedicate or transfer parts of the common area to any public agency, the right to suspend an owner's voting rights to use the common areas for non-payment of any assessment or for infraction of the published rules and regulations of the Association.
3. Rights reserved to the Declarant as set forth herein.
4. No portion of any of the subdivision, including any lot or common area, shall be used as a road right of way or easement for the purpose of connecting or accessing any adjoining property which is not part of the subdivision, without the express written consent of Declarant or the Association, which must be recorded in the Office of the Clerk for Pickens and/or Gilmer Counties, Georgia, as applicable. Notwithstanding the foregoing, the Common Elements include certain Right of Way Easements for access and all purposes of residential use and development over one or more adjoining development properties. Declarant has authority to grant reciprocal easements to such adjoining development properties over Falling Waters Subdivision roadways for access to and from public roads and for other reasonable residential purposes.

5. The Association shall have an easement for maintenance, installation and repair of utilities, including drainage facilities, along a 15 foot easement centered along all side lot lines, and centered along both sides of the right of way for each subdivision roadway or drive maintained by the Association.
6. The rights of others in and to the use of portions of the subdivision roadways as may presently exist or as may in the future be negotiated and conveyed by Declarant or by the Association. THE OWNER OF EACH LOT IS ADVISED THAT ALL THE LOTS IN FALLING WATERS SUBDIVISION ARE ACCESSED BY WAY OF THE STREETS SHOWN ON THE RECORDED PLATS OF FALLING WATERS SUBDIVISION. ALL SUCH STREETS ARE PRIVATE STREETS AND ARE NEITHER MAINTAINED BY GILMER COUNTY NOR CONSIDERED PART OF THE ROAD SYSTEM OF GILMER COUNTY. THE RESPONSIBILITY FOR THE UPKEEP AND MAINTENANCE OF THE STREETS SHOWN THEREON LIES WITH THE PROPERTY OWNERS AND THE ASSOCIATION AND NOT GILMER COUNTY.
7. The rights of the Association, or other organization having jurisdiction, to reasonably regulate the use and maintenance of the river access area and the roadways used for such access.
8. The developer reserves the right to re-plot and re-divide any lots or to change portions of the roadways as necessary and appropriate to provide access to all lots and to provide the most advantageous use of each lot. This right includes the right to eliminate and convey any cul-de-sac or to provide additional roadways either as part of the common area, or as private drives for the use of specified lots.
9. The developer reserves the right to modify any common area shown on the plat and to convey some portion of the same to private use, or to add additional common areas which shall be maintained by the Association.

**ARTICLE IV**  
**Protective Covenants**

1. No Lot shall be used except for residential and recreational purposes.
2. No lot shall be subdivided. With specific written approval from the Declarant or the Association, any two or more contiguous lots may however be combined. Upon approval, all setback lines and other use restrictions shall apply separately to the resulting lot as if the same had been an original lot. The resulting lot shall incur only one Association assessment and shall have only one individual membership right in the Association.
3. No swine, livestock or poultry shall be raised or bred on any lot; however household pets such as cats or dogs, are permissible provided they are not bred or maintained for commercial purposes and are not allowed to constitute a nuisance to Lot Owners.
4. Neither the roadways in Falling Waters Subdivision nor any lot or any part of the common area shall be used for recreational ATV or off road motorcycle riding. It is permissible however to ride golf carts or ATV's on the roadways as a means of convenient transportation to and from the common area so long as the same have sufficient mufflers to contain excess noise, and they are operated at low speeds and in a responsible manner.
5. Each Lot owner shall maintain any improvements placed upon any Lot, and no unsightly or dilapidated buildings or other structures shall be permitted on any Lot. No parking or storing of any junked, inoperable or unlicensed automobiles, trucks or heavy equipment is permitted on any Lot or road in the Development.
6. No residence shall be erected, constructed, maintained, used or permitted to remain on any Lot other than one single-family dwelling. Any residence must be approved by the Architectural Control Committee (hereinafter "ACC") and follow the guidelines set forth in this declaration. Each residence to be constructed on a Lot shall have a minimum finished heated and cooled area of 1,400 square feet for a single level residence and 1,800 square feet for a two level residence, with a minimum of 1400 square feet on the first

- floor or level of the home built above the basement of the house. A home with an open loft shall not generally be considered a multi-level home and the finished square footage in the loft may be considered as part of the minimum 1400 square feet. On a multi-level structure, a full walk-out basement can be considered part of the square footage if it is heated space, has fully finished walls, floors and ceilings, has minimum ceiling height of eight (8) feet throughout entire basement square footage and has at least thirty percent of the . Once construction has begun on said dwelling, all exterior construction must be completed within one (1) year of the commencement of construction.
7. A guest home may be constructed on any lot containing 2 acres or more, either as a stand alone building, or as part of a garage, so long as such structure is built according to a plan approved by the ACC, is architecturally compatible with the primary dwelling and is built no more than one year before construction begins on such dwelling.
  8. No more than one outbuilding may be constructed on any Lot. Said outbuilding shall be used only for the purposes of housing boats, cars, RVs or lawn and garden equipment. Said building must be constructed in a workman-like manner and may not be constructed more than one year prior to construction of the main residence. This building must be enclosed on at least three sides and the top with some sort of door, which would thus close in all four sides of the building, and must be approved by the ACC.
  9. Any grading or other land use which creates erosion runoff into streams or other Lots is prohibited, including any such activity in conjunction with construction of any septic system. Any grading performed in violation of any county, state or federal ordinance, statute or regulation shall be deemed to be a noxious or offensive activity and may result in fines by the Association or by the ACC, or in a civil action to enjoin such activity.
  10. Any land disturbing activity shall comply with the rules of the Georgia Division of Environmental Protection, and as set forth in the Georgia Administrative Code. Any such activity may also be subject to ordinances of Pickens and Gilmer Counties which protect the area from excessive erosion, groundwater deprecation, and ground instability. In the case of any conflict between these restrictions and such State or Local Law, the more restrictive provisions shall apply.
  11. Any improvement to any lot, including the construction of any home, must be approved by the ACC before any site work has been started. No single-wide or double-wide mobile homes/manufactured homes, modular buildings, previously constructed homes, buses or systems built homes shall be placed on or shall be allowed to remain on any lot within Falling Waters Subdivision except with the specific approval of the ACC in accordance with this section.
  12. No commercial cutting of timber shall be permitted on any Lot. However, the clearing of home sites, or clearing to establish views from the home site is permitted provided that no more than twenty-five percent (25%) of trees that measure ten (10) inches or greater in diameter at the base of the trunk of the tree on any Lot may be cleared without the prior approval of the Architectural Control Committee. The removal of any dead or leaning trees is not prohibited in any circumstance. Cutting of smaller trees/bush hogging is permitted and will not be considered part of the twenty-five percent (25%) allowed clearing so long as trees that are cut are less than ten (10) inches in diameter at the base of the trunk of the tree. Existing open land or pasture will not be considered part of the twenty-five percent (25%) allowed clearing.
  13. No structure, other than a fence, may be built within twenty-five (25) feet of any roadway or common driveway right of way, or any front or rear lot line, or within fifteen (20) feet of any side property line or within forty (40) feet of any rear property line.
  14. No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon any Lot not owned by Declarant, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining or drilling activity thereon; provided further that the prohibition against drilling activity shall not include any

- drilling or excavation activity associated with the installation of utilities and communication facilities and any activities associated with soil testing, construction of building foundations or master drainage control.
15. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, and has been approved in advance by the Architectural Control Committee.
  16. All clotheslines, garbage cans, above-ground tanks, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the other Lots, streets and areas in the Development outside the Lot on which such items are located. Each Lot owner shall provide closed sanitary receptacles for garbage and all rubbish, trash, and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. Furthermore, no bedding or clothing of any type, nor any towels, clothes or other items of wearing or cleaning apparel, or any mops, brushes, brooms or other types of cleaning apparatus shall be hung or placed outside of any structure located on any Lot in the Development in such a manner as to be visible from any street, or other Lot or area located in the Development.
  17. After any improvements are made to any lot, the owner shall keep and maintain such lot in a neat and well-maintained condition, free of unsightly undergrowth, brush piles, felled trees and the like, and shall keep yards and other open areas of the lot neatly trimmed and either mowed or landscaped.
  18. This development is not to be used as a campground. Lot owners are not, however, prohibited from overnight stays in professionally manufactured equipment, provided the camping equipment is not left on any Lot for more than seven (7) days out of any thirty (30) day period and is not in violation of any local ordinance. Tent camping is allowed provided tent(s) are not visible from any road or roadway or any adjacent lot. Permanent residence in any type of camping equipment is strictly forbidden.
  19. No Lot or Lots within the Development shall be used for the establishment of a hunt club and no property within the Development shall be used for the purpose of hunting. Hunting is not allowed at any time or on any part of the subdivision, and no firearm shall be discharged within the Development.
  20. No trade, commerce or other activity which may be considered a nuisance to the neighborhood may be carried on upon any Lot. It is permissible to operate a home-based business, provided that deliveries to the home do not exceed two (2) UPS, Federal Express or similar express carrier per day. No trade materials or inventories may be stored upon any Lot and no tractor trailer type trucks, house trailers or mobile homes may be stored or regularly parked on any Lot. No junk or unsightly vehicles of any type or description or unsightly buildings may be placed upon any Lot. Home-based businesses shall be allowed to store small inventories within the residence or enclosed outbuilding situated on the Lot. No advertisements or signage of any kind will be permitted on any Lot for home-based businesses.
  21. The Declarant reserves the right to erect any signs in Falling Waters Subdivision. Signs may be erected by individual Lot owners but must meet the following criteria and must be approved by the ACC:
    - Signs must be neat, clean and made of metal or wood material only.
    - Signs must measure one (1) foot by one (1) foot in size.
    - Signs must be of tan or beige color for the background of the sign with the border of the sign in black.
    - Lettering for the sign must be black in color and said lettering must be professional in appearance.
    - Signs must be mounted on a four (4) inch by four (4) inch pressure treated timber. Sign cannot be mounted on any tree.
    - Only one (1) "For Sale" or "For Rent" or similar sign for the sale or rent of a property may be placed on a lot at any given time.
    - Builders may erect a sign only during construction of the home and said sign must follow the above criteria.
    - Name and address signs do not have to abide by these criteria, but must be neat, clean and made of metal or wood material. Name and address signs must also be of earth-tone colors and/or white and red.

- Declarant is not required to follow the above criteria when placing signage within Falling Waters Subdivision.
- Signs can be placed only on individual Lots. Directional signs or any signs for advertisement at the entrance and road intersections are prohibited. Any exceptions of this covenant must be approved by a majority vote of the officers of the Association.
- No "For Sale" signs may be erected on any Lot until Declarant has conveyed all lots within Falling Waters Subdivision unless written approval has been given by the Declarant. Any "For Sale" signs erected on any lot within Falling Waters Subdivision before conveyance of all lots and without written approval by the Declarant may be removed by the Declarant.

**ARTICLE V**  
**Architectural Control and Standards**

There is hereby established an Architectural Control Committee (hereinafter "ACC"), which shall be appointed by the Executive Board.

1. No improvements shall be erected, placed, altered, maintained or permitted to remain on any Lot, nor shall any construction be commenced thereon until plans for such improvements have been approved by action of the ACC in accordance with the provisions herein; provided however, that improvements and alterations completely within the interior of a building may be completed without approval.
2. If damage and/or wear and tear to subdivision roadways are determined by the ACC to be attributed to construction of any improvement, then the property owner for whose benefit the improvement was made will be liable for any costs of repair.
3. The term "improvements" shall mean and include structures and construction of any kind, whether above or below the land surface, such as, but not limited to, buildings, outbuildings, water lines, sewers, electric and gas distribution facilities.
4. Any Lot owner who commences to build without written permission and stamped plan approval from the ACC is subject to a fine of \$100.00 per day for every calendar day from date of starting construction (i.e. digging footings, clearing Lot to build) until receipt of approval letter from the ACC. The ACC reserves the right to bring legal action against Lot owners who start building without approved plans.
5. Any land disturbance must be stabilized within twenty-four (24) hours, failure of Lot owner or owner's agent to stabilize disturbed area shall result in a fine of \$100.00 per day levied by the ACC or the Association.
6. The ACC has created "Building Standards" which describe construction standards to be used as the criterion for the approval of proposed improvements. The ACC or the Association shall have the power to modify, alter, supplement, or amend Building Standards at any time by an affirmative vote of sixty-seven percent (67.0%) of Lot owners, excluding Declarant, but such change shall not be effective as to improvements, which have previously been approved. Declarant will have the power to modify, alter, supplement or amend Building Standards at any time until they have conveyed all lots within Falling Waters Subdivision.
7. The actions of the ACC through its approval or disapproval of plans, and other information submitted pursuant hereto, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.
8. All communications and submittals shall be addressed to Falling Waters Subdivision ACC, at such address as the ACC shall hereinafter be designated in writing. The ACC shall reply in writing to all plan submittals within thirty (30) days of receipt hereof. The ACC shall have 30 days to approve complete plans that have been submitted by Lot owner(s) or builder.

The following are "Building Standards" as created by the Falling Waters Subdivision ACC:

Building Type:

- Stick built construction only (no mobile, modular or systems built homes) except as specifically modified herein.

Exterior:



- Block, brick, rock/stone foundation. Exposed concrete or block must have stucco applied on or before completion of home.
- Wood, log, rock/stone, stucco, brick, or fiber cement (i.e. Hardiplank), or any combination is permitted. Vinyl and aluminum siding is not permitted. Any siding made of materials other than wood or fiber cement must be approved by the ACC.
- Any new materials that are approved by the Georgia Homebuilders Association May be considered and must be approved by the ACC.
- Exterior of homes must be of earth tone colors.
- Windows/doors must be of sound quality and workmanship and installed properly.
- No satellite dishes over 18 inches in diameter shall be permitted.
- No pre-fabricated, metal or plastic outbuilding will be permitted. Outbuildings must be constructed of similar materials and colors as the home. Exceptions for materials and colors of barns constructed on properties will be at the discretion of the ACC.
- Detached garages are permitted, but must be constructed of the same exterior material as the home.
- Roof-pitch must be a minimum of 6/12. This also applies to outbuildings and detached garages.
- No chain-link, barbed wire or other similar wire fencing allowed. All fencing must be constructed of wood, stone or wrought iron. Any other material used for fencing must be approved by the ACC before installation.

#### Contractor Responsibilities:

- Contractor must have proof of insurance; to include but not limited to automobile, workman's compensation, and liability insurance of no less than one million dollars.
- Contractor may be required to provide references to ACC prior to plan approval.
- Contractor must provide one (1) portable toilet for each job site within the development. The contractor must present a maintenance agreement, which allows for weekly dumping/cleaning of portable toilet.
- Contractors must have a dumpster on site for each job site. Trash and excess/waste building materials shall be placed in dumpster at the end of each working day.
- The ACC reserves the right to levy fines of \$100 per day against contractors who do not adequately clean building site or do not have a functioning portable toilet.
- Building materials cannot be placed within road rights of way or utility easements.
- Contractor must assume liability for all construction vehicles that enter Falling Waters Subdivision en route to their job site, specifically overweight vehicles that damage road surface and negligence of operators. Concrete truck weight limit is 5 yards per truck.
- Contractor is responsible for actions of any/all subcontractors.
- Contractors/subcontractors are responsible for any cut, break or damage to underground utility caused by their negligence.

#### Lot Owner Responsibilities:

- Present 2 copies of blue line schematic drawings of home to ACC. Colors used on exterior of home must be included and color samples may be required.
- Present all materials requested on attached Architectural Control Checklist to the Falling Waters Subdivision ACC.
- Have permission of ACC before commencement of construction.
- Lot owner is responsible for agents, employees, contractors, subcontractors and assigns.
- If the lot has been improved (built upon), then the owners of the improved lot shall maintain their lot (s) to neatly kept and mowed condition. All stumps, brush piles and debris shall be removed from lot (s) or hidden from sight from the roadways.

#### Architectural Control Checklist:

Below is a checklist of items needed for house plan approval from the Architectural Control Committee (ACC).

#### Preliminary Approval:

- 2 copies of preliminary site plan disclosing location of all improvements to be placed on lot (one copy will be returned to you and one copy will be kept and placed in your file)

Final Approval:

- 2 copies of schematic drawings of home (locating improvements on lot, showing elevations on all four sides, color schemes, building materials, and all site improvements, is recommended) (one copy will be returned to you and one copy will be placed in your file).
- Contractor/Builders name
- Proof of insurance (builders risk, auto & liability, workmen's compensation)
- List of Subcontractors to be used
- Copy of portable toilet and dumpster contract or receipt of payment
- Copy of signed disclaimer from Contractor
- General description of building materials

Upon receipt of all the above items, the ACC will respond within 15 days for Preliminary Approval and 30 days after all documents have been received for Final Approval. Copies of your correspondence to the ACC will be kept and placed in your file.

Neither the ACC, nor any member, employee or agent thereof, shall be liable to any owner of a Lot or to anyone submitting plans for approval or to any other interested party by reason of mistake in judgment, negligence, or nonfeasance in connection with the approval, disapproval or failure to approve any such plans or for any other action in connection with its or their duties hereunder. Likewise, anyone who submits plans to the ACC for approval agrees not to bring any action or suit to recover any damages against the Declarant, the ACC, or any partner, member, employee or agent of the Declarant or the ACC.

The ACC may make exceptions to the provisions herein, when, in its sole discretion, such exceptions would not be in conflict with the intended character of the property subject to this Declaration when fully developed and occupied in accordance with the developer's plans and objectives therefore.

#### ARTICLE VI Powers and Duties of the Owners Association

Residential Association Membership. Every Owner of a Lot within the Property shall be a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, the ownership of a Lot within the Property. Upon termination of ownership, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Lot. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall collectively be considered one (1) Owner.

Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

Class "A". Class "A" Members shall be all Owners except the Class "B" Member. Class "A" Members shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 1 above; provided, there shall be only one (1) vote per Lot.

Class "B". The sole Class "B" Member shall be Declarant. The Class "B" membership shall cease and be converted to Class "A" membership upon the termination or expiration of the Declarant Control Period. The Class "B" Member shall have one (1) vote for each Lot it owns.

When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall collectively be considered one (1) Owner for purposes of voting rights appurtenant to said Lot and the voting rights may be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Multiple owners of a Lot shall elect among themselves a voting member

and shall provide the Association with a written statement identifying the voting member at least thirty (30) days in advance of any meeting or election.

Board of Directors. The Association shall be governed by a Board of Directors in accordance with its Bylaws.

Conveyance of Common Area to the Association. At the discretion of the Declarant, the Declarant may at any time convey any or all of the Common Area to the Association;

5. Maintenance. The Association shall maintain and repair the Common Area, including, but not limited to, any streets owned by the Association.

6. Enforcement of Governing Documents. The Association, or any non-breaching Owner, shall have the right, but not the obligation, to proceed at law or in equity to compel compliance with the provisions of this Declaration or to prevent the anticipated violation of the terms of provisions of this Declaration by any Owner. In addition to seeking remedies at law, the Association, or any non-breaching Owner, or any of them jointly or severally, shall have the right to proceed in equity, including making application to the appropriate court of competent jurisdiction for immediate injunctive relief, in order to compel specific performance of the terms herein or to prevent the violation or breach of such terms by any Owner or other persons. The prevailing party or parties shall be entitled to recover the costs and expenses of any action at law or equity, including reasonable attorneys' fees, from the losing party or parties, at the discretion of the court.

7. Immediate Correction. In addition to the foregoing, the Association shall have the right, but not the obligation, whenever there shall have been built on any Lot any structure which is in violation of this Declaration or without the prior approval of the Architectural Review Board, to enter upon such Lot and correct or remove such violating structure at the expense of the Owner. Any such entry and abatement or removal shall not be deemed a trespass.

8. Non-Waiver. The failure to enforce any such right, reservation, restriction, or condition herein shall not be deemed a waiver of the right to do so thereafter as to the same or another breach, and shall not bar or affect such later enforcement.

9. Insurance. The Association shall maintain such insurance as the Board of Directors of the Association shall determine to be necessary and appropriate.

## ARTICLE VII

### ASSESSMENTS, SPECIAL ASSESSMENTS RESERVES AND COLLECTION OF CHARGES

1. Assessments. Assessments shall mean and refer to the annual fee or sum of money levied against Lots to fund the common expenses of the Association, including without limitation, the repair, maintenance, security and improvement of Common Area.
2. Amount of Assessments. The budget of the Association for each year shall be established by the Board at least sixty (60) days in advance of each Assessment period (the calendar year). Within thirty (30) days after adoption of any proposed budget by the Board, the Board shall provide to all Owners a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than thirty (30) nor more than sixty (60) days after mailing of the summary of the budget and notice of the meeting. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless, at that meeting, a majority of all the Class "A" Members and the Class "B" Member vote to reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The Assessment for the calendar year shall be determined based upon the budget adopted by the Board and ratified by the Owners. Notwithstanding any provision to the contrary, no action of the Association or the Board, including the proposal or approval of

any budget, shall be effective to increase or decrease annual assessments by more than ten percent (10%) each year unless such budget or assessment increase or decrease shall be approved by the affirmative vote of Owners to which at least a majority of the votes in the Association are allocated which are present in person or by proxy at an annual or special meeting called for the purpose of considering such increase, which affirmative vote must include approval from a majority of the Class "A" Members present.

Two (2) or more contiguous Lots owned by the same Owner are not considered to be only one (1) Lot for Assessment purposes or for any other purposes herein. This sentence does not apply to a Lot that has been created by the combination of two prior lots into a single Lot, as provided in Article IV herein and as approved by the Association.

Each Lot shall be assessed equally irrespective of how many persons or entities own an interest in any Lot.

3. Increase in Assessments.

Assessments shall be fixed at a uniform rate for all Lots. For the year 2013, Assessments shall be fixed at \$600.00.

Payment of Assessments. Owners' obligation to pay Assessments shall commence upon receipt of the deed conveying the Lot to the Owner and thereafter shall be payable on or before the due date set by the Board of Directors of the Association for payment of Assessments.

4. Purpose of Assessments. Use of the Assessments levied shall include, but not be limited to, the following:

- a. To maintain and repair all common roads constructed within the Property to at least the standard that such roads were in at the time of their completion, and to maintain the entrance and road signs and all street lights and landscaping adjacent to such roads in a manner consistent with the overall appearance of the Property;
- b. To maintain drainage structures and drainage easements;
- c. To provide garbage removal services for all Lots, should the Association elect to provide said service;
- d. To repair damage by Owner: In the event that the need for maintenance or repairs is caused through the willful or negligent act of the Owner, his family, tenants, guests, invitees, or contract purchasers, the cost of such maintenance or repair shall be added to, and become part of, the Assessment to which the Lot is subject;
- e. To maintain the Common Area and any real or personal property, leased or licensed to the Association;
- f. To pay all ad valorem taxes levied against the Common Area and any property owned by the Association, if any;
- g. To pay the premiums on all insurance carried by the Association as owner or lessee of the Common Area, all insurance carried by the Association as lessee or licensee of any real or personal property, all public or general liability insurance carried by the Association, and all other insurance carried by the Association;
- h. To pay all legal, accounting and other professional fees incurred in carrying out the duties or rights as set forth herein or in the Bylaws of the Association, or as allowed by law;
- i. To pay employees of the Association, in performing any tasks herein enumerated or determined to be necessary or appropriate for the Association;

- j. To pay for and maintain security within the Property if the Association, in its discretion, decides to provide a security program. (However, nothing in these Declarations requires the Association to procure and have a security force or a company police department);
  - k. Snow removal from roads; and
  - l. Any other use which the Association deems reasonable and necessary in the best interest of the Association or its members.
5. Special Assessments. In addition to the Assessments authorized above, the Board of Directors of the Association may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area; including, but not limited to, the common roadways and utility easements serving the Property, or for the purpose of meeting any unanticipated expenses related to the Common Area.
  6. Payment of Special Assessments. Upon the imposition of a Special Assessment, the Board of Directors shall provide Owners with written notice of the purpose of the Special Assessment and the amount owed by each Owner. Owners shall remit payment to the Association for said amount within thirty (30) days of receipt of notice.
  7. Reserves. The Board of Directors of the Association may establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area and those other portions of the Property that the Association may be obligated to maintain, and for unforeseen expenses of the Association. Such reserve fund is to be established, in so far as is practicable, out of the Assessments. Further, the reserve fund may be applied to operational deficits provided adequate reserves are maintained. All reserve monies held by the Declarant shall be turned over to the Association.
  8. Responsibility of Owners. Each Owner hereby covenants and agrees that for each Lot owned, by acceptance of a deed for the Property, whether or not it shall be so expressed in such deed, that each Owner shall thereafter promptly pay the Assessments assessed for and against each Lot owned, in such amounts and on such terms as established by the Board of Directors of the Association, and to timely pay the Special Assessments for capital improvements, repair and maintenance as established and collected in accordance with this Declaration.
  9. Creation of the Lien and Personal Obligation. Each Owner of any Lot by acceptance of a deed to such Lot, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Assessments, (2) Special Assessments, , and (3) the charges and costs herein outlined for noncompliance and/or cure of non-compliance. Responsibility for timely payment of all Assessments and Special Assessments and other charges or costs as herein provided is the personal responsibility and liability of the Owner of each Lot, and a claim of lien against the Lot shall arise immediately out of the non-payment of such assessments, charges, fees and costs.
  10. Timely Payment. All Assessments not timely paid by the due date set by the Board of Directors of the Association and Special Assessments and/or other costs and charges not timely paid within thirty (30) days of billing shall be assessed late fees, along with interest accruing at the maximum rate of interest allowed by Georgia law, together with costs, including reasonable attorneys' fees, incurred by the Association. All unpaid sums owed to the Association shall become a charge and continuing lien upon the Lot against which each such Assessment, Special Assessment and/or costs and charges is made. Each assessment owed, together with late fees, interest, and costs, including reasonable attorneys' fees incurred, shall also be the personal obligation of the Owner of such Lot at the time the Assessments, Special Assessments, and related charges became due.
  11. Nonpayment. The effect of nonpayment of Assessments, Special Assessments, and/or other costs and charges shall constitute a violation of this Declaration. In addition to all remedies, whether in law or equity, available to the Association, the Association shall be entitled to the following further relief:

- a. Interest on Late Payment. An interest charge at the maximum legal rate allowed under Georgia Law together with late fees, costs and other charges, including reasonable attorneys' fees, will be charged on all late payments of fees, Assessments, Special Assessments and/or costs and charges that are past due after the due date.
- b. Personal Liability. If the Assessments, Special Assessment and/or other costs and charges are not paid within sixty (60) days after the due date, the Association may bring an action at law or in equity against the Owner personally, and there shall be added to the amount of such charge the costs of enforcing this Declaration, including reasonable attorneys' fees. In the event a judgment is entered against the Owner, such judgment shall include interest on the fees and other charges as provided in the preceding subparagraph, together with costs and reasonable attorneys' fees.
- c. Execution of Lien. The Association may enforce its lien upon any Lot, by civil action, by foreclosure under Georgia Law, by judicial foreclosure, or otherwise as provided by law. In any such action the Association may include and shall recover costs or expenses of collection or foreclosure, including reasonable attorney's fees.
- d. Other Rights. In addition to the above, the Association shall reserve the rights it may have under and according to applicable law to attach and execute against any personal assets of an Owner in order to receive the Assessments, Special Assessments and/or other late fees, interest, costs, and charges due.
- e. Subordination of the Lien to Mortgages. Any lien arising out of violation of the provisions herein shall be subordinate to the lien of any first mortgage or Deed of Trust to which the Lot is subject. Sale or transfer of any shall not affect any Association lien. However, the sale or transfer of any Lot pursuant to a foreclosure arising out of a default of such first mortgage or Deed of Trust shall extinguish the lien of such assessments as to payments which became due prior to such transfer of the Lot through the foreclosure sale; provided, however, that the Board of Directors may in its sole discretion determine such unpaid Assessments to be an Annual or a Special Assessment, as applicable, collectable pro-rata from all Owners. The sale, conveyance or transfer of any Lot in the subdivision shall not affect the lien of the Association, which runs with the land in addition to such lien being a personal obligation of the person who owned the Lot at the time that the lien arose.

#### ARTICLE VIII Shared Driveways

1. The conveyance of some but not all lots include, and are subject to the rights of others in and to common driveways shown on the plat and labeled 'access easement'. The easements shall be for ingress egress and regress and for installation of underground utilities, and for all other purposes incidental to the use of the lots accessed or capable of being accessed over such driveway(s).
2. Use of the shared driveway easements shall be exclusive and shall be limited to only those lots thereby accessed. The rights of way and easements shall be the width shown on the plat or amendments thereto, and if no width is shown the easements shall be 20 feet in width.
3. The driveways shall remain open and unobstructed at all times, and no vehicles shall be parked in such driveways.
4. The driveway easements shall be perpetual in nature, and shall inure to the benefit of and burden title to any numbered lot thereby accessed, and shall run with title to each lot.
5. It shall be the obligation of the owners of lots accessed by shared driveways to maintain the driveways in a manner so that such driveways are open and accessible by a passenger automobile in all weather, free of ruts, holes and erosion.

#### ARTICLE IX Declarant Control

1. Until such time as Declarant has sold all the lots in the subdivision, or until Declarant specifically relinquishes such rights in writing, Declarant shall have the right to appoint each of the members of the Executive Board of the Association, and shall have three votes in the association for every lot owned by Declarant. Declarant shall have the right to exercise any Declarant right through a marketing agent or management company, who shall have such rights and authority as may be delegated by Declarant.
2. While Declarant owns any lot, Declarant shall have the right to waive, amend or modify this Declaration, to add land to or withdraw land from the subdivision, to revise the subdivision plat as to any unsold lot or the routes of any subdivision roadways, to dedicate additional common areas, to grant easements and rights of way which benefit the association, or to grant variances from the restrictions contained herein as to any lot or lots. In the granting of a variance or an amendment affecting only a limited number of lots, it shall not be necessary that Declarant record a supplementary Declaration if such variance or amendment is referenced in the conveyance or otherwise documented in Association records.
3. In the exercise of any of the rights set forth herein, Declarant shall have such additional rights and authority as may be necessary to the full and complete enjoyment thereof.

**ARTICLE X**

**Procedures for Fines and Suspension of Community Privileges**

The executive board, or an adjudicatory panel appointed by the executive board may hold a hearing to determine if any lot owner should be fined, or if planned community privileges or services should be suspended for violations of the declaration, bylaws, and rules and regulations of the association. The procedure for such action shall be in accordance with law

**ARTICLE XIII**

**Amendment**

1. Except in case of amendment executed by Declarant under the terms of this Declaration or by Special Declarant right, this Declaration may be amended only by affirmative vote or written agreement approved by at least sixty-seven percent (67%) of the Members of the Association voting in person or by proxy at a regular or special meeting called for the purpose of considering one or more amendments which are generally described in the notice of such meeting. A quorum for any meeting where amendments are proposed shall require for passage of such amendment (but not for other regular business) that at least 50% of the lots be represented in person or by proxy.
2. Every amendment to this declaration shall be prepared, executed, and recorded in the Office of the Register of Deeds of Pickens and/or Gilmer Counties, Georgia, as applicable, and shall be effective only upon such recordation.
3. No action to challenge the validity of an amendment adopted pursuant to this article may be brought more than one year after the amendment is recorded.

**ARTICLE XIV**

**Miscellaneous Provisions**

1. This Declaration, as may be amended from time to time, shall run with the land and shall be binding on all parties, their successors and assigns, and upon all persons claiming by or under them until January 1, 2040, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless, by majority vote of the current owners of the Lots described herein, it is agreed to terminate said covenants in whole or in part.
2. Invalidation of any of these covenants or any part thereof by judgments or Court order shall in no way affect any of the other provisions which shall remain in full force and effect. The failure of any person or persons to take action to restrain the violation of any of these covenants and restrictions shall not be construed as waiver of any enforcement rights and shall not prevent the enforcement of such covenant or covenants in the future.

IN WITNESS WHEREOF, HIGHLAND FALLS LLC has caused this instrument to be executed in its name by its Member- Manager, this the day and year first above written.

Executed in the presence of

[Signature]  
Unofficial witness

[Signature]  
Notary Public



HIGHLAND FALLS LLC.  
a Delaware limited liability company

By: [Signature]  
William N. Adkins, Manager