



## 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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CROSS REFERENCE  
DEED/DEED BOOK 0920  
PAGE 144/144CROSS REFERENCE  
Deed Book 280  
Page 125-27PROTECTIVE COVENANTS

004522

THIS DECLARATION OF PROTECTIVE COVENANTS, Made and published this 1st day of November, 1986, by R & E MOUNTAIN PROPERTIES, INC., a corporation organized and existing under the laws of the State of Georgia, and having its principal place of business in Fannin County, Georgia.

## WITNESSETH:

THAT WHEREAS, said corporation is the owner of a development generally known in the community as MOUNTAIN TOPS, and being a development of all those lots, tracts or parcels of land situated, lying and being in the 7th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot Nos. 8, 9, and 29, and also in the 8th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot Nos. 316, 317, and 318, and also being in the 7th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot No. 30, and also being in the 8th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot No. 319 and being in the 7th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot No. 6 as shown on a plat of survey of the Mountain Tops Development made by Dugger P. Kiker, G.R.L.S. #1551, dated October 19, 1986, said plat being recorded in Plat Book 17, page 87, in the office of the Clerk of the Superior Court, Fannin County, Georgia. The aforesaid tract of land is the same property that was conveyed to R & E MOUNTAIN PROPERTIES, INC., by warranty deed dated the 1st day of November, 1986, from Roy G. Quintrell, said deed being recorded in Deed Book 120, page 347-50 in the office of the Clerk of the Superior Court, Fannin County, Georgia.

WHEREAS, it is to the interest, benefit and advantage of R & E MOUNTAIN PROPERTIES, INC., and to each and every person who shall hereafter purchase any lot in said development that certain Protective Covenants governing and regulating the use and occupancy of the same be established, set forth and declared to be covenants running with the land;

NOW, THEREFORE, for and in consideration of the premises and

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of the benefits to be derived by R & E MOUNTAIN PROPERTIES, INC., and each and every subsequent owner of any of the lots in said development, said R & E MOUNTAIN PROPERTIES, INC., does hereby set up, establish, promulgate and declare the following Protective Covenants to apply to the following lots and to all persons owing said lots, or any of them, hereafter; these Protective Covenants shall become effective immediately and shall run with the land and shall be binding on all persons claiming under and through R & E MOUNTAIN PROPERTIES, INC., to wit:

1. SEWAGE DISPOSAL: A septic tank and proper drain field, in accordance with the standards of the Health Department of the State of Georgia, will be used for sewage disposal for houses constructed on subdivision lots.

2. TEMPORARY STRUCTURES: No structure of a temporary nature, such as a basement, trailer, lean-to, tent, shack, garage, barn or other outbuilding will be used at any time as a residence either temporarily or permanently.

3. MOBILE HOME OR MANUFACTURED HOME: No mobile home or manufactured home of any type will be used or located on any lot at any time as a residence either temporarily or permanently.

4. BUILDING LOCATION: No house will be built closer than fifteen (15) feet to an adjoining subdivision lot. Residential building setback lines shall be at least fifteen (15) feet from the side and rear lot lines. and ten (10) feet from the street right of way.

5. EASEMENTS: Easements for installation and maintenance of utilities are reserved whereby a power line and water line with all essential clearing may be installed along the roads which traverse the above described lots.

6. NUISANCES: No noxious or offensive activity will be carried on upon any lot, nor shall anything be done thereof which may be or become an annoyance or nuisance to the neighborhood. No nuisance or offensive, noisy or illegal trade, calling, or transaction will be done, carried on, suffered, or permitted upon any lot, nor will any lot be used for any illegal purposes. Each lot will be kept and maintained completely free of any junk (including old vehicles and discarded appliances), trash, and

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garbage.

7. ARCHITECTURAL CONTROL: No structure of any type will be placed upon those portions of the property reserved for public utility easements and for a public (traffic) roadway for ingress and egress, nor will the roadway be obstructed, blocked or modified in any way not clearly in the public interest. All construction should comply with all local and state codes and be of reasonable architectural design.

8. LAND USE AND BUILDING TYPE: No lot will be used for any purpose other than residential development. No building shall be erected, altered, placed or permitted on any lot other than one detached one family dwelling. No duplexes, condominiums, or other mutli-unit buildings shall be located on any of said lots. No building shall be erected on any lot that will be used as a school, church, kindergarten, or business of any type.

9. LAND SCAPING: No large trees will be removed from any lot except for those necessary to clear an area for construction of a house or reasonable land scaping. Concrete block construction is prohibited on any lot except that concrete blocks may be used in the foundations and chimneys of the houses erected on said lots, and must be either stuccoed, rocked, bricked, or covered with wood. Yards shall be maintained regularly, and grass shall not be permitted to grow to an offensive heights.

10. SIGNS: No signs, banners or displays except for reasonable identification of owner and address of the property will be allowed to be visible from the public road of any property with the exception of realty signs with a size limit of four square feet maximum. All realty signs advertising property for sale shall only state the word "available".

11. TRAFFIC: All motorcycles and dune buggys shall be limited to a speed of ten miles per hour for through traffic.

12. ANIMALS: No domesticated animals except for ordinary household pets such as a cat or dog shall be located or maintained on any subdivision lot from the subject tract of land. Animals that will not be located on any subdivision lot will include, but not be limited to, horses, cows, goats, sheep,

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chickens, turkeys, pigs, etc. Household pets, such as cats and dogs, shall be under the owner's control at all times.

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them and cannot be amended or changed in any way unless an instrument is signed by all of the property owners in said development. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate said covenants either to restraining violation or to recover damages.

Invalidation of any one of these covenants by judgment or court order shall in no wise effect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the said R & E MOUNTAIN PROPERTIES, INC., has hereunto set its hand and affixed its seal, this the day and year first above written.

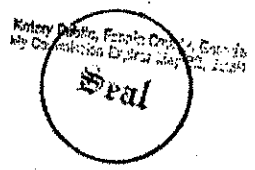
R & E MOUNTAIN PROPERTIES, INC.

BY: RE. Schuch

ATTEST: [Signature]

[Signature]  
Witness

Rhonda Mitchell Mastin  
Notary Public



GEORGIA, FANNIN COUNTY  
CLERK'S OFFICE SUPERIOR COURT  
Filed for record of 11 J. CLOAKAM 86  
This 11 day of Dec. 1986  
Recorded in Book 120 folio 351-54  
This 11 day of Dec. 1986  
Ray W. Parker  
CLERK

STATE OF GEORGIA  
COUNTY OF FANNIN

725

GEORGIA, FANNIN COUNTY  
CLERK'S OFFICE SUPERIOR COURT  
FILED FOR RECORD 12/30/97  
AT 1:20PM RECORDED 12/31/97  
BOOK 280 PAGE 725-27  
*Robert W. Chastain*  
CLERK OF SUPERIOR COURT

Angela Stewart Panter, P.C.  
Attorney at Law  
3798 East First Street  
Blue Ridge, GA 30513

7905

AMENDMENT TO PROTECTIVE COVENANTS

THIS AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS is made and published this 31st day of July, 1997, by R & E MOUNTAIN PROPERTIES, INC., of Fannin County, Georgia, hereinafter referred to as "Developer".

WITNESSETH:

THAT WHEREAS, said Developer is the owner of the development generally known in the community as MOUNTAIN TOPS, and being a development of all those lots, tracts or parcels of land situate, lying and being in the 7th District and 2nd Section of Fannin County, Georgia and being part of Land Lot Nos. 8, 9, and 29, and also in the 8th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot Nos. 316, 317 and 318, and also in the 7th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot No. 30, and also being in the 8th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot No. 319, and also being in the 7th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot No. 6, as shown on a plat of survey of the Mountain Tops subdivision prepared by Dugger P. Kiker, G.R.L.S. No. 1551, dated October 19, 1986, said plat being recorded in Plat Book 17, page 87, in the office of the Clerk of Superior Court of Fannin County, Georgia; and

WHEREAS, said Developer has for the interest, benefit and advantage of himself, and for each and every person who shall hereafter purchase any lot in said development, established, declared and set forth certain protective covenants governing and regulating the use and occupancy of the same, and declared same to be covenants running with the land; and

WHEREAS, said protective covenants were dated November 1, 1986, and recorded in Deed Book 120, pages 351 through 354, Fannin County deed records; and

WHEREAS, said Developer desires to amend said protective covenants as to Mountain Tops Phases II and III (beginning with Lot 60 and continuing with each lot thereafter, i.e. 61, 62, 63 etc.) for the benefit of each and every person who shall hereafter purchase any lot in said Phase II and III of said development;

NOW, THEREFORE, for and in consideration of the premises and of the benefits to be derived by R & E MOUNTAIN PROPERTIES, INC., and each and every subsequent owner of

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any of the lots in Mountain Tops Phases II and III, said Developer does hereby amend, revise and modify the original protective covenants by adding the following:

13. ROADS: Right-of-way easements as shown on the recorded plats are reserved over and across the roads which traverse the subdivision for the purpose of ingress and egress for all lot owners. The Developer presently maintains the subdivision roads for the benefit of all property and improvements in the development, such maintenance including landscaping, lighting, signage, paving and repair, all in an attractive and orderly condition. So long as the Developer continues to so maintain said roads, each owner of an unimproved lot shall pay a minimum assessment of \$100.00 per year, and each owner of an improved lot shall pay a minimum assessment of \$200.00 per year for maintenance of the subdivision roads and right-of-ways. The Developer shall collect the assessments annually and shall oversee the maintenance of all roads and right-of-ways for a period of three years from the date of this amendment. Thereafter, this covenant and obligation shall terminate, and all assessments shall be collected from the lot owners through a property owners' association to be established by the lot owners. The lot owners shall also be responsible for all road maintenance through said property owners' association.

14. EXTERIOR DESIGN: All homes in Phases II and III shall have a genuine wood exterior over 80% of the dwelling whether same be logs, shingles or siding. There shall be no imitation wood exteriors nor any other type of exterior which is inconsistent with a genuine wood design. There shall also be no white trim or white roofing permitted. Exterior design shall be compatible with the environment and aesthetically pleasing. There shall also be no octagon-shaped homes permitted in the development.

15. OUTBUILDINGS: No metal storage buildings or any other type of outbuildings shall be permitted unless the exterior is compatible with the exterior of the home. All buildings located on the premises shall be comparable in quality with, and architecturally compatible with, the existing buildings located in the development.


16. OUTDOOR CLOTHESLINES: No outdoor clotheslines shall be permitted nor shall any laundry be dried outdoors so as to create a visual nuisance.

17. GARBAGE CONTAINERS: All garbage containers shall be screened from view from public roads and shall be emptied on a regular basis. All garbage containers shall be kept in a clean and sanitary condition.

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IN WITNESS WHEREOF, the said Developer has hereunto set his hand and seal,  
the day and year first above written.

R & E MOUNTAIN PROPERTIES, INC.

By *Ray G. [Signature]* (Seal) 

Signed, sealed and delivered  
in the presence of:

*Angela Stewart Panter*  
Witness

*Alisa [Signature]*  
Notary Public  
My Commission Expires: 10-07-2001  




850

GEORGIA, FANNIN COUNTY  
 CLERK'S OFFICE SUPERIOR COURT  
 FILED FOR RECORD 3/6/01  
 BY 9A IN RECORDS 3/6/01  
 BOOK 383 PAGE 850-52  
 CLERK OF SUPERIOR COURT

STATE OF GEORGIA  
 COUNTY OF FANNIN

Angela Stewart Panter, P.C.  
 Attorney at Law  
 P. O. Box 1549  
 Blue Ridge, GA 30513

01742

CORRECTIVE AMENDMENT TO PROTECTIVE COVENANTS

THIS CORRECTIVE AMENDMENT TO PROTECTIVE COVENANTS is made and published this 1st day of February, 2001, by R & E MOUNTAIN PROPERTIES, INC., of Fannin County, Georgia, hereinafter referred to as "Developer".

WITNESSETH:

THAT WHEREAS, said Developer is the owner of the development generally known in the community as MOUNTAIN TOPS and being a development of all those lots, tracts or parcels of land situate, lying and being in the 7<sup>th</sup> District and 2<sup>nd</sup> Section of Fannin County, Georgia and being part of Land Lot Nos. 8, 9 and 29, and also in the 8<sup>th</sup> District and 2<sup>nd</sup> Section of Fannin County, Georgia, and being a part of Land Lot Nos. 316, 317 and 318, and also in the 7<sup>th</sup> District and 2<sup>nd</sup> Section of Fannin County, Georgia, and being a part of Land Lot No. 30, and also being in the 8<sup>th</sup> District and 2<sup>nd</sup> Section of Fannin County, Georgia, and being a part of Land Lot No. 319, and also being in the 7<sup>th</sup> District and 2<sup>nd</sup> Section of Fannin County, Georgia and being part of Land Lot No. 6, as shown on a plat of survey of Mountain Tops subdivision prepared by Dugger P. Kiker, G.R.L.S. No. 1551, dated October 19, 1986, said plat being recorded in Plat Book 17, page 87, in the office of the Clerk of Superior Court, Fannin County, Georgia; and

WHEREAS, said Developer has for the interest, benefit and advantage of himself, and for each and every person who shall hereafter purchase any lot in said development, established, declared and set forth certain protective covenants governing and regulating the use and occupancy of the same, and declared same to be covenants running with the land; and

WHEREAS, said protective covenants were dated November 1, 1986, and recorded in Deed Book 120, pages 351 through 354, Fannin County deed records; and

WHEREAS, said Developer desires to amend said protective covenants as to Mountain

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Tops Phases II and thereafter (beginning with Lot 60 and continuing with each lot thereafter, i.e., 61, 62, 63 etc.) for the benefit of each and every person who shall hereafter purchase any lot in said Phase II and each Phase thereafter of said development; and

WHEREAS, this instrument is being executed to correct and clarify that certain Amendment to Protective Covenants dated July 31, 1997, and recorded in Deed Book 280, page 725, Fannin County deed records, by clarifying the Developer's intent to amend said Protective Covenants as to each phase of the development after Phase I;

NOW, THEREFORE, for and in consideration of the promises and of the benefits to be derived by the Developer, and each and every subsequent owner of any of the lots in Mountain Tops Phases II and thereafter, said Developer does hereby amend, revise and modify the original protective covenants by adding the following:

13. ROADS: Right-of-way easements as shown on the recorded plats are reserved over and across the roads which traverse the subdivision for the purpose of ingress and egress for all lot owners. The Developer presently maintains the subdivision roads for the benefit of all property and improvements in the development, such maintenance including landscaping, lighting, signage, paving and repair, all in an attractive and orderly condition. So long as the Developer continues to maintain said roads, each owner of an unimproved lot shall pay a minimum assessment of \$100.00 per year, and each owner of an improved lot shall pay a minimum assessment of \$200.00 per year for maintenance of the subdivision roads and right-of-ways. The Developer shall collect the assessments annually and shall oversee the maintenance of all roads and right-of-ways for a period of three years from the date of the amendment. Thereafter, this covenants and obligation shall terminate, and all assessments shall be collected from the lot owners through a property owners' association to be established by the lot owners. The lot owners shall also be responsible for all road maintenance through said property owners' association.

14. EXTERIOR DESIGN: All homes in Phases II and thereafter shall have a genuine wood exterior over 80% of the dwelling whether same be logs, shingles or siding. There shall be no imitation wood exteriors nor any other type of exterior which is inconsistent with a genuine wood design. There shall also be no white trim or white roofing permitted. Exterior design shall be compatible with the environment and aesthetically pleasing. There shall also be no octagon-shaped homes permitted in the development.

15. OUTBUILDINGS: No metal storage buildings or any other type of outbuildings shall be permitted unless the exterior is compatible with the exterior of the home. All buildings located

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on the premises shall be comparable in quality with, and architecturally compatible with, the existing buildings located in the development.

16. OUTDOOR CLOTHESLINES: No outdoor clotheslines shall be permitted nor shall any laundry be dried outdoors so as to create a visual nuisance.

17. GARBAGE CONTAINERS: All garbage containers shall be screened from view from public roads and shall be emptied on a regular basis. All garbage containers shall be kept in a clean and sanitary condition.

These covenants shall amend and supercede any prior covenants and agreements and shall run with the land and shall be binding on all parties and all persons claiming under them and cannot be amended or changed in any way unless an instrument is signed by all of the property owners in said development.

IN WITNESS WHEREOF, the said Developer has hereunto set his hand and seal, the day and year first above written.

R & E MOUNTAIN PROPERTIES, INC.

Signed, sealed and delivered  
in the presence of:

Marni Addison  
Witness  
Mary J. Stanley  
Notary Public  
MY COMMISSION EXPIRES OCT. 7, 2011

Roy Guntroll  
Roy Guntroll, President



Doc ID: 000865050002 Type: GLR  
Filed: 02/23/2010 at 01:24:00 PM  
Fee Amt: \$12.00 Page 1 of 2  
Fannin Co. Clerk of Superior Court  
DANA CHASTAIN Clerk of Courts  
BK 920 PG 646-647

STATE OF GEORGIA  
COUNTY OF FANNIN

**CROSS- REFERENCE:**

PROTECTIVE COVENANTS dated November 1, 1986, recorded November 10, 1986, at Deed Book 120, Pages 351-354, Fannin County, Georgia, records; the AMENDMENT TO PROTECTIVE COVENANTS, dated July 31, 1997, recorded December 30, 1997, at Deed Book 280, Pages 725-727; and CORRECTIVE AMENDMENT TO PROTECTIVE COVENANTS, dated February 1, 2001, recorded March 6, 2001, at Deed Book 383, Pages 850-852, aforesaid records.

ADOPTION OF AND AMENDMENT  
TO PROTECTIVE COVENANTS for  
MOUNTAIN TOPS SUBDIVISION  
PHASE II AND FORWARD

THIS Adoption and Amendment of Protective Covenants for Phase II forward of Mountain Tops Subdivision, is promulgated by the newly formed Mountain Tops Homeowners' Association, Inc. successors in interest to R&E Mountain Properties, Inc. former Declarant of said Protective Covenants as cross-referenced above.

Whereas Declarant has completed his development activities within the Subdivision, and has subsequently sold and alienated his interest in the common properties to the Homeowners Association (hereinafter "Association") duly incorporated:

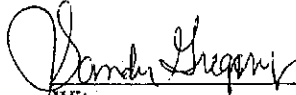
Whereas the Association having obtained the authority to do so, does now amend said Covenants.


NOW THEREFORE, for and in consideration of TEN DOLLARS in hand paid, and of the mutual promises contained herein, the said Homeowners' Association does hereby amend and restate the last paragraph of the Protective Covenants as amended and recorded at Deed Book 383, Pages 850-852 to read:


**"These Covenants shall run with the land and shall be binding on all parties and all persons claiming under them and cannot be amended or changed except by vote carried by sixty per cent (60%) of the members of the Homeowners' Association."**

All other provisions of the Amended Protective Covenants remain unchanged by this Adoption and Amendment.

Signed, sealed and delivered  
in our presence this 16<sup>th</sup> day  
of February 2009. 10

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Notary public

  
\_\_\_\_\_  
Mike Miller, President  
Mountain Tops Homeowners Assoc.



# MOUNTAIN TOPS PROPERTY OWNERS ASSOCIATION

November 2020

From your Mountain Tops POA Board of Directors

The MTPOA-Board of Directors encourages you to approve the new less-restrictive Protective Covenants V.2020. A copy of the revised Covenants and the Owner Approval form is included and posted to our community's website: [www.MountainTopsBlueRidge.com](http://www.MountainTopsBlueRidge.com)

This initiative is the MTPOA Board of Directors' **Final Attempt** to pass any updated Covenants.

***Why should we approve the Covenants?*** They will help to Protect Your Future!

- **PROPERTY VALUES**

Homeowners living in a community with an active Association have a track record of Sustained Property Values. These communities are generally better maintained and have a better overall appearance – all helping to sustain and grow long-term property values.

- **NEIGHBORHOOD APPEARANCE**

Protective Covenants provide greater certainty the community will remain physically attractive over time through rules on architecture, landscaping, accessory buildings, fences, signs, and related matters. Approval of the Protective Covenants will help keep Mountain Tops looking like the community ***you chose!***

- **GOVERNING GUIDELINES**

There's inherent benefit in knowing we have specific rules and regulations to guide the day-to-day operation of our Mountain Tops community. *Imagine a cluster of rental Tiny Homes – or trailers!*

Your Support for these new Protection Covenants:

- ✓ Costs you nothing
- ✓ Reflects a real "Spirit of Community"
- ✓ Shows support for our long-established Mountain Tops way of life

***What should we do next?***

Please take the time to review, sign and return the Owner Approval Form.

Once in-place, the Protective Covenants will help to Protect You, Your Property and Your Lifestyle!

170 Completed Approval Forms are needed to ratify the Covenants and to file them with the Fannin County Clerk of Courts. One form is needed for each lot. Some property owners are asked to complete multiple approval forms. Approval forms must be notarized.

Several Approval Signing Sessions will be held at the Chapel in the coming weeks.

***Check for dates on the MTPOA website!***

Thank you for your Time and Consideration!

After Recording Return To:  
Lueder, Larkin & Hunter, LLC  
5900 Windward Parkway, Suite 390  
Alpharetta, Georgia 30005  
ATTN: Joseph C. Larkin

Cross Reference:  
Deed Book 120, Page 351

**STATE OF GEORGIA**

**COUNTY OF FANNIN**

**DECLARATION OF COVENANTS, CONDITIONS**

**AND RESTRICTIONS FOR MOUNTAIN TOPS**

WHEREAS, R & E Mountain Properties, Inc., a Georgia corporation, recorded that certain Protective Covenants on December 11, 1986 in Deed Book 120, Page 351, *et. seq.*, of the Fannin County, Georgia property records (hereinafter referred to as the "Original Declaration");

WHEREAS, documents which purport to amend the Original Declaration were recorded as follows:

| <u>Document</u>   | <u>Recorded</u>   | <u>Deed Bk</u> | <u>Page No.</u> |
|---|-------------------|----------------|-----------------|
| The Amendment to Protective Covenants (the "1997 Amendment")  | December 30, 1997 | 280            | 725             |
| The Corrective Amendment to Protective Covenants (the "2001 Corrective Amendment")  | March 6, 2001     | 383            | 850             |
| The Adoption of and Amendment to Protective Covenants for Mountain Tops Subdivision Phase II and Forward (the "2010 Amendment") | February 23, 2010 | 920            | 646             |

|  |                   |      |     |
|--|-------------------|------|-----|
| Amendment to the Covenants and Restrictions for R.E. Mountain Properties and Mountain Tops Property Owners' Association, Inc. (the "2013 Amendment") | December 12, 2013 | 1078 | 709 |
|--|-------------------|------|-----|

WHEREAS, the 1997 Amendment amends the Original Declaration, but only applies to Phases II and III of the Mountain Tops community, and the 2001 Corrective Amendment corrected the 1997 Amendment to cause it to apply to Phases II and after;

WHEREAS, the Original Declaration's restrictive covenants expired on December 11, 2006 pursuant to O.C.G.A. Section 44-3-60, and therefore the 2010 Amendment and the 2013 Amendment are not effective;

WHEREAS, the affirmative obligations set forth within the Original Declaration are unaffected by the expiration of the restrictive covenants pursuant to Georgia law;

WHEREAS; Mountain Tops Property Owners' Association, Inc., a Georgia nonprofit corporation (hereafter referred to as the "Association"), is the homeowners association identified in the Bylaws of the Mountain Tops Property Owners' Association, Inc. (the "Original Bylaws"), and is existing and operating in the Mountain Tops subdivision;

WHEREAS, Lot Owners within the Mountain Tops subdivision who have executed this Declaration of Covenants, Conditions and Restrictions for Mountain Tops (the "Declaration") desire to retain the affirmative obligations provided for within the expired Original Declaration;

WHEREAS, Lot Owners who have executed this Declaration are the Owners of that certain real property described in the signature page(s) affixed hereto and listed on Exhibit "C" attached hereto and incorporated herein by reference, desire to subject their Lot and the Property to the terms and provisions of this Declaration, and do hereby subject their Lot and the Property to continuing permanent Membership in the Association;



**DECLARATION OF COVENANTS, CONDITIONS**

**AND RESTRICTIONS FOR MOUNTAIN TOPS**



**LUEDER, LARKIN & HUNTER, LLC**  
ATTORNEYS AT LAW

5900 Windward Parkway, Suite 390

Alpharetta, Georgia 30005

770-685-7000

*www.luederlaw.com*

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- EXHIBIT "E" - BYLAWS

**DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS FOR MOUNTAIN TOPS**

ARTICLE I.           GEORGIA PROPERTY OWNERS' ASSOCIATION ACT

Mountain Tops is a residential property owners' development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq., as may be amended or supplemented.

ARTICLE II.           EFFECTIVE DATE AND PROPERTY SUBJECT TO DECLARATION

2.1.   Property Subject to the Declaration. The property subject to this Declaration includes all those lots, tracts or parcels of land situated, lying and being in the 7th District and 2nd Section of Fannin County, Georgia, set forth in Exhibit "B" hereof, and being a part of Land Lot Nos. 8, 9, and 29, and also in the 8th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot Nos. 316, 317, and 318, and also being in the 7th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot No. 30, and also being in the 8th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot No. 319 and being in the 7th District and 2nd Section of Fannin County, Georgia, and being a part of Land Lot No. 6 as shown on a plat of survey of the Mountain Tops Development made by Dugger P. Kiker, G.R.L.S. #1551, dated October 19, 1986, said plat being recorded in Plat Book 17 page 87, in the office of the Clerk of the Superior Court, Fannin County, Georgia. The aforesaid tract of land is the same property that was conveyed to R & E MOUNTAIN PROPERTIES, INC., by warranty deed dated the 1st day of November, 1986, from Roy G. Quintrell, said deed being recorded in Deed Book 120, page 347 - 350 in the office of the Clerk of the Superior Court, Fannin County, Georgia, being more particularly described in the signatory portion of this Declaration in Exhibit "C" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. This description shall also include all property which may be made subject to this Declaration as provided in Article II, Section 2.3 of this Declaration. For purposes of property description and submission of the Owners' Lots set forth herein only, the Plats are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

2.2.   Effective Date. This Declaration shall not be effective, whether or not recorded, until and unless the following three conditions have been satisfied: (1) the owners of at least 2/3 of the Lots depicted on the plats have executed this Declaration; (2) two Association officers have executed this Declaration; and (3) this Declaration and the signature pages attached hereto have been recorded in the Fannin County, Georgia Records. The date on which all of the above three conditions have been satisfied shall constitute the "Effective Date" of this Declaration.

Any Owner of a Lot within Mountain Tops may submit the Owner's Lot to this Declaration after the Effective Date and thereby become a Member of the Association, as provided within Section 2.3, below

2.3. Consent to this Declaration after the Effective Date. All lots shown on the Plats which have not been submitted to the terms and provisions of this Declaration as of the Effective Date shall be part of the Additional Property. Submission to this Declaration of a lot within the Additional Property may be accomplished after the Effective Date by (1) a consent form being executed by the owner of the lot, (2) the consent form being executed by at least one officer of the Association, and (3) the consent form being recorded by the Association within the Fannin County, Georgia property records. A sample consent form (which may be varied by the Association) is attached hereto as Exhibit "D" and incorporated herein by this reference.

### ARTICLE III. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Each Owner of any Lot that is subject to this Declaration, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be a member of the Association. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

3.2. Voting. The Association shall have two classes of Membership: Class A and Class B:

(a) Class A – Improved Lots. Every person who is an Owner of a Residence shall be a Class A Member and shall be entitled to one vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it. A member's right to vote shall automatically be suspended during any period in which a member is more than thirty (30) days delinquent on any assessment or charge, and the member shall be ineligible to vote on any matter until the member's account balance has been paid in full.

(b) Class B – Unimproved Lots. Every person who is an Owner of a Lot without a Residence shall be a Class B Member and shall be entitled to one-half (1/2) vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot without a Residence, the one-half (1/2) vote for such Lot shall be exercised as those Owners determine among themselves. In the absence of such advice, the Lot's one-half (1/2) vote shall be suspended if more than one (1) Person seeks to exercise it. A member's right to vote shall automatically be suspended during any period in which a member is more than thirty (30) days delinquent on any assessment or charge, and the member shall be ineligible to vote on any matter until the member's

account balance has been paid in full. The Class B membership shall cease and shall be converted to Class A membership when a Residence is constructed upon the Owner's Lot.

3.3. Entity Owners. In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary, or other designated agent or Trustee of such trust, or manager of such other legal entity shall be eligible to represent such entity in the affairs of the Association. Such person's eligibility to represent such entity shall terminate automatically upon the termination of such person's relationship with the entity which is the member of the Lot. The membership rights of an Owner which is a corporation, partnership, or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

#### ARTICLE IV. ASSOCIATION RIGHTS AND RESTRICTIONS.

4.1. Association Rights and Restrictions. The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of any other right it may have, to:

- (a) make and to enforce reasonable rules and regulations governing the use of the Common Property;
- (b) enforce the Declaration, Bylaws, and rules and regulations of the Association by imposing reasonable monetary fines and suspending use and voting privileges. These powers, however, shall not limit any other legal means of enforcing such documents or provisions by either the Association or, in an appropriate case, by an aggrieved Owner;
- (c) grant permits, licenses, utility easements, and other easements, permits or licenses under, through or over the Common Property;
- (d) convey all or a portion of the Common Property to any Person upon the written approval of at least two-thirds (2/3) of the total vote of the Association membership;
- (e) control, manage, operate, maintain, replace and, in the Board's discretion, alter or improve some or all portions of the Community for which the Association is assigned maintenance responsibility under this Declaration;
- (f) deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation, or eminent domain, in accordance with the provisions of this Declaration; and
- (g) represent the Owners in dealing with governmental entities on matters related to the Common Property.

## ARTICLE V.

## ASSESSMENTS

5.1. Purpose of Assessment. The Association shall have the power to levy assessments as provided herein. Assessments shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Association and the membership, and for expenses of the Association as provided within the Declaration, and as otherwise authorized by the Board.

5.2. Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments and charges; (ii) special assessments pursuant to Section 5.7 of this Article; (iii) specific assessments pursuant to Section 5.3 of this Article; and (iv) capital contribution assessments pursuant to Section 5.8 of this Article.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees from any prior judgment, if any), shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and the Owner's grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. The Board of Directors may, but is not obligated to, permit assessments to be paid in monthly, quarterly, or semi-annual installments. No Owner may be exempted from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

The lien provided for herein shall have priority as provided in the Act. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Fannin County, Georgia land records evidencing the lien created under the Act and this Declaration.

5.3. Rate of Assessment and Specific Assessments. Annual assessments and special assessments shall be fixed at a uniform rate for all Lots; provided however, the annual assessments of the Class B Members of the Association shall be an amount equal to fifty percent (50%) of the annual assessment of the Class A Members. Notwithstanding the above, the Board of Directors shall have the power to levy specific assessments against a Lot or Lots pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board of Directors shall have the power to levy specific assessments as follows:

(a) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility hereunder, any common expenses benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specifically specially assessed equitably among all of the Lots which are benefited according to the benefit received.

(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 Lot may be specifically specially assessed against such Lot; such common expenses shall include, but shall not be limited to, attorney's fees actually incurred by the Association in enforcing the Declaration, Bylaws or Association rules and regulations, regardless of whether or not an enforcement lawsuit has been filed.

5.4. Computation of Operating Budget and Assessments. Prior to the beginning of each new fiscal year, the Board of Directors shall (1) prepare a budget covering the estimated expenses of the Association for the upcoming new fiscal year and shall fix in the budget the amount of the annual assessment for the upcoming new fiscal year, and (2) post on the Association's website and/or endeavor to deliver a copy of the budget to each Owner at least sixty (60) days prior to the beginning of the new fiscal year. The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of expenses on which the Board may base the annual assessment. The Board may, but is not obligated to, permit the annual assessment to be paid in monthly, quarterly, or semi-annual installments. The budget and the assessment shall become effective unless disapproved by the majority of the total vote of the Owners at a meeting of the membership held at least thirty (30) days prior to the beginning of the new fiscal year. Said meeting may be the annual meeting of the members if the annual meeting is held at least thirty (30) days prior to the beginning of the new fiscal year or may be at a special meeting requested in accordance with the Bylaws.

If either (1) the Owners disapprove the budget at least thirty (30) days prior to the beginning of the new fiscal year as provided herein, or (2) the Board fails for any reason to either (a) prepare a budget and fix the amount of the annual assessment for the new fiscal year or (b) deliver the budget to the members, as provided herein, then the budget and annual assessment in effect for the current fiscal year shall continue for the upcoming new fiscal year.

5.5. Fiscal Year. The fiscal year of the Association may be set by Board resolution or, in the absence thereof, shall be the calendar year.

5.6. Reserve Budget and Reserve Account. The Board may prepare an annual or multi-year reserve budget which shall take into account the number and nature of replaceable assets, the expected life of such assets, and the expected repair or replacement costs of the assets. The Board may establish a reserve account for such expected repair or replacement costs, and may fund the reserve account from collected assessments. The reserve budget shall not operate as a limitation



on the expenditures of funds in the reserve account, but, rather, the Board may spend funds in the reserve account as deemed reasonable by the Board.

5.7. Special Assessments. The Board may levy a special assessment against all Lots to pay the costs of any improvement or repair on the Common Property, or for any other purpose as determined by the Board; provided, however, prior to becoming effective, any special assessment must be approved by a majority of the Owners present in person or by proxy at a duly called meeting of the members of the Association at which a quorum is obtained. Special assessments may be required to be paid during the fiscal year, or alternatively, in the discretion of the Board of Directors, may be paid over a set number of years.

5.8. Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(a) If any assessment, fine, or charge is not paid in full within thirty (30) days of the due date, a late charge equal to the greater of ten dollars (\$10.00) or ten percent (10%) of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten percent (10%) per annum, or such higher rate as permitted by the Act, shall accrue from the due date.

(b) If an assessment, fine, or charge remains unpaid more than ninety (90) days after the due date, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Act, the Declaration, the Bylaws, and Georgia law, including reasonable attorney's fees actually incurred (and including post-judgment attorney's fees from any prior judgment, if any).

(c) A member's right to vote shall automatically be suspended during any period in which a member is more than thirty (30) days delinquent on any assessment or charge, and the member shall be ineligible to vote on any matter until the member's account balance has been paid in full.

5.9. Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within ten (10) 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.

## ARTICLE VI.

## USE RESTRICTIONS

Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants, and Occupants comply with all provisions of this Declaration, the Bylaws, and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established.

6.1. Sewage Disposal. A septic tank and proper drain field, in accordance with the standards of the Health Department of the State of Georgia, will be used for sewage disposal for houses constructed on Lots.

6.2. Temporary Structures. No structure of a temporary nature, such as a basement, trailer, lean-to, tent, shack, garage, barn or other outbuilding will be used at any time as a residence either temporarily or permanently.

6.3. Mobile or Manufactured Home. No mobile home or manufactured home of any type will be used or located on any Lot at any time as a residence, either temporarily or permanently.

6.4. Building Location. Residential building setback lines shall comply with municipality codes and ordinances in effect at the time the building permit is issued.

6.5. Nuisances. No noxious or offensive activity will be carried on upon any Lot, nor shall anything be done thereof which may be or become an annoyance or nuisance to the neighborhood. No nuisance or offensive, noisy or illegal trade, calling, or transaction will be done, carried on, suffered, or permitted upon any Lot, nor will any Lot be used for any illegal purposes. Each Lot will be kept and maintained completely free of any junk (including old vehicles and discarded appliances), trash, and garbage.

6.6. Architectural. No structure of any type will be placed upon those portions of the property reserved for public utility easements and for a public (traffic) roadway for ingress and egress, nor will the roadway be obstructed, blocked or modified in any way not clearly in the public interest. All construction should comply with all local and state codes and be of reasonable architectural design.

6.7. Land Use and Building Type. No Lot will be used for any purpose other than residential development. No duplexes, condominiums, or other multi-unit buildings shall be located on any of said Lots. No building shall be erected on any Lot that will be used as a school, church, kindergarten, or business of any type.

6.8. Landscaping. Concrete block construction is prohibited on any Lot except that concrete blocks may be used in the foundations and chimneys of the houses erected on said Lots, and must be either stuccoed, rocked, bricked, or covered with wood. Yards shall be maintained regularly, and grass shall not be permitted to grow to an offensive heights.

6.9. Signs. No signs, banners or displays except for reasonable identification of owner and address of the property will be allowed to be visible from the public road of any property with the exception of realty signs with a size limit of four square feet maximum.

6.10. Animals. No domesticated animals except for ordinary household pets such as a cat or dog shall be located or maintained on any subdivision Lot from the subject tract of land. Animals that will not be located on any subdivision Lot will include, but not be limited to, horses, cows, goats, sheep, chickens; turkeys, pigs, etc. Household pets, such as cats and dogs, shall be under the owner's control at all times.

6.11. Exterior Design. There shall also be no white trim or white roofing permitted. Exterior design shall be compatible with the environment and aesthetically pleasing. There shall also be no octagon-shaped homes permitted in the development.

6.12. Outbuildings. No metal storage buildings or any other type of outbuildings shall be permitted unless the exterior is compatible with the exterior of the home. All buildings located on the premises shall be comparable in quality with, and architecturally compatible with, the existing buildings located in the development.

6.13. Outdoor Clotheslines. No outdoor clotheslines shall be permitted nor shall any laundry be dried outdoors so as to create a visual nuisance.

#### ARTICLE VII. MAINTENANCE RESPONSIBILITY

The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement of all landscaping, grass areas, paving and other improvements situated on the Common Property.

If the Board determines that the need for maintenance or repair is in the Common Property or any other area within the Community which is the Association's responsibility hereunder, and is caused through the actions or inactions of any Owner or Occupant, or his or her family, guests, lessees or invitees, then the Association may assess the cost of any such work against the Owner's Lot.

#### ARTICLE VIII. EASEMENTS

8.1. Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to the Owner's Lot, subject to the following provisions:

(a) the right of the Board of Directors to make and to enforce reasonable rules and regulations governing the use of the Common Property;

(b) the right of the Association to suspend the right of an Owner to use the Common Property in the Community for any period during which any assessment against the Owner or Owner's 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;

(c) the right of the Board of Directors to convey all or a portion of the Common Property to any Person upon the written approval of at least two-thirds (2/3) of the total vote of the Association membership.

Any Lot Owner may delegate the Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of the Owner's family, or to the Owner's tenants and guests.

8.2. Easement for Entrance Sign and Landscaping. The Association shall have an easement over any portion of a Lot on which any entrance feature, including, but not limited to, any perimeter wall, fence and/or landscaping, and the Community sign and landscaping, are located. The Association shall be solely liable for the maintenance, repair and replacement of the entrance features, landscaping, and annual flowers, if any. Any and all entrance features and landscaping shall remain the personal property of the Association and shall not be realty. The Association shall additionally have an easement for the installation and maintenance of utility and water lines across the Lot to the entrance features.

#### ARTICLE IX. INSURANCE

9.1. Hazard Insurance on Common Property. The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. The insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

9.2. Association Liability and Directors' and Officers' Liability Insurance. The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million (\$1,000,000.00) dollars.

9.3. Premiums and Deductible on Association Policies. Premiums for all insurance obtained by the Association shall be a common expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

9.4. Policy Terms. All such insurance coverage obtained by the Board shall be written in the name of the Association. Such insurance shall be governed by the following provisions:

(a) All policies shall be written with a company licensed to do business in Georgia.

(b) All policies on the Common Property shall be for the benefit of the Association and its members.

(c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(e) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies should be reviewed annually by one or more qualified persons.

(f) The Board shall use reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Board, the Association's manager, if any, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash; and

(iii) that no policy may be canceled or substantially modified or subjected to nonrenewal without at least thirty (30) days prior written notice to the Association.

#### ARTICLE X. REPAIR AND RECONSTRUCTION

10.1. Common Property. In the event of damage to or destruction of all or any part of the Common Property insured by the Association as a result of fire or other casualty, unless two-thirds (2/3) of the Lot Owners vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the damaged part of the Common Property.

10.2. Cost Estimates. Immediately after a fire or other casualty causing damage to the Common Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Lot) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

## ARTICLE XI. MORTGAGEE'S RIGHTS

11.1. Foreclosure. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the first priority Mortgage, it shall not be liable for assessments or charges by the Association chargeable to such Lot which became due prior to such acquisition of title. Such acquirer shall be responsible for all charges occurring subsequent to the passage of title.

11.2. Eligible Mortgage Holder. A Mortgage Holder shall become an Eligible Mortgage Holder if the Mortgage Holder provides to the Association in writing its name, address, and phone number, as well as the address of the Lot and name of the Lot Owner to which it holds a Mortgage; provided, however, a settlement statement from a closing shall not be sufficient information to enable a Mortgage Holder to become an Eligible Mortgage Holder. Upon becoming an Eligible Mortgage Holder, an Eligible Mortgage Holder shall be entitled to timely written notice of the following:

(a) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Owner of any other obligation under this Declaration which is not cured within sixty (60) days; or

(b) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

11.3. Non-Impairment. Notwithstanding anything to the contrary herein contained, the provisions of this Declaration governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

## ARTICLE XII. AMENDMENTS

This Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent, of the Association members holding at least two-thirds (2/3) of the total vote of the Association. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter

of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and filed in Fannin County, Georgia land records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend the Declaration to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

Any action to challenge the validity of this Declaration or an amendment adopted under this Article must be brought within one (1) year of the recording of same in the Fannin County, Georgia land records. No action to challenge this Declaration or any such amendment may be brought after such time.

### ARTICLE XIII. GENERAL PROVISIONS

13.1. Duration. The covenants, conditions, restrictions, and easements within the Declaration shall run with and bind the property subject to this Declaration perpetually or as otherwise provided by Georgia law.

13.2. Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety in the Community; however, each Owner, for itself, himself or herself and its, 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 in the Community. It shall be the responsibility of each Owner to protect its, his or her person and property and all responsibility to provide security shall lie solely with each Lot 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.

13.3. Dispute Resolution. Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute against the Association before that Owner or Occupant files any lawsuit against the Association, the Board, or any officer or director, or any agent of same. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance and resolve the dispute in an amicable fashion, and shall give the Association a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Association shall give notice of the date, time, and place of the hearing to the Person requesting the hearing. The Association shall schedule the hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the Person requesting the hearing. Alternatively, the Board may notify the Owner or Occupant that it is waiving the requirement of the Owner or Occupant to request and attend the hearing with the Board.

13.4. No Discrimination. No action shall be taken by the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status, or handicap.

13.5. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

13.6. Eminent Domain. If all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within one hundred and eighty (180) days after such taking at least two-thirds (2/3) of the total number of Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining Common Property to the extent land is available therefor.

13.7. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation of the Association, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

13.8. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision, which shall remain in full force and effect.

13.9. Conflicts. The duties, powers, and obligations of the Association, including the members, directors, and officers, shall be those set forth in the Georgia Property Owners' Association, the Georgia Nonprofit Corporation Code, the Declaration, the Bylaws, the Articles of Incorporation, and the rules and regulations of the Association. If there are conflicts or inconsistencies between such, then the provisions of the Georgia Property Owners' Association, the Georgia Nonprofit Corporation Code, the Declaration, the Bylaws, the Articles of Incorporation, and the rules and regulations of the Association, in that order, shall prevail; and each Owner of a Lot, by



acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

13.10. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these covenants, conditions, and restrictions, or the intent of any provision thereof.

13.11. Preparer. With the exception of the Use Restrictions, which were drafted by the Declarant, this Declaration was prepared by Joseph C. Larkin, Lueder, Larkin & Hunter, LLC, 5900 Windward Parkway, Suite 390, Alpharetta, Georgia 30005.

IN WITNESS WHEREOF, the undersigned hereby certify that the agreement of the required parties was lawfully obtained.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MOUNTAIN TOPS PROPERTY OWNERS'  
ASSOCIATION, INC.

\_\_\_\_\_  
Signature of President  
Print Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Signature of Secretary  
Print Name: \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT "D"

CONSENT TO THE DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR MOUNTAIN TOPS

The undersigned Owner(s) is/are the record owner(s) and holder(s) of title in fee simple to a Lot within the Mountain Tops subdivision in Fannin County, Georgia, located at the address described below, and more particularly shown as Lot \_\_\_\_\_, Phase \_\_\_\_\_, as located in Land Lot \_\_\_\_\_ of the 7<sup>th</sup> District, 2<sup>nd</sup> Section, Fannin County, Georgia records and as shown on the that certain plat of survey recorded in Plat Hanger \_\_\_\_\_, Page \_\_\_\_\_, Fannin County, Georgia records such plat being incorporated herein by this reference.

Owner(s) desires to acknowledge and consent to submission to the Declaration of Covenants, Conditions and Restrictions for Mountain Tops (the "Declaration"), and Owner further desires to acknowledge that Owner is a permanent member of the Mountain Tops Property Owners' Association, Inc. with the attendant benefits and responsibilities; Owner does hereby consent, on behalf of Owner's successors, successors-in-title, heirs, and assigns, that Owner's property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in the Declaration, including mandatory assessments in favor of the Association with lien rights afforded therefor, and including permanent membership in the Association, all of which shall run with the title to Owner's property.

Signed, sealed and delivered  
this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
[NOTARY SEAL]

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Print or Type Full Name of Owner

\_\_\_\_\_  
Street Address  
  
\_\_\_\_\_

Signed, sealed and delivered  
this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
[NOTARY SEAL]

\_\_\_\_\_  
Signature of Co-Owner, if any

\_\_\_\_\_  
Print or Type Full Name of Co-Owner

# MOUNTAIN TOPS PROPERTY OWNERS' ASSOCIATION

## 5 YEAR WORKING FORECAST

(With Fee Increases)

| PROPERTY OWNERS   | 190        | 2021 DUES |              | 2022 INCREASE        |              |                      |  |
|-------------------|------------|-----------|--------------|----------------------|--------------|----------------------|--|
|                   |            |           |              |                      |              |                      |  |
| DEVELOPED LOTS    | 164        |           | \$ 650.00    | \$ 105,600.00        | \$ 750.00    | \$ 123,000.00        |  |
| UNDEVELOPED LOTS  | 89         |           | \$ 325.00    | \$ 29,600.00         | \$ 375.00    | \$ 33,000.00         |  |
| <b>TOTAL LOTS</b> | <b>253</b> |           | <b>Total</b> | <b>\$ 135,200.00</b> | <b>Total</b> | <b>\$ 156,000.00</b> |  |

|                                       | 2020 YTD             | 2020 WORKING BUDGET  | 2021 WORKING BUDGET  | 2022 WORKING BUDGET  | 2023 WORKING BUDGET  | 2024 WORKING BUDGET  | 2025 WORKING BUDGET  |
|---------------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| <b>INCOME</b>                         |                      |                      |                      |                      |                      |                      |                      |
| ANNUAL FEE COLLECTED                  | \$ 165,745.39        | \$ 135,200.00        | \$ 135,200.00        | \$ 156,000.00        | \$ 156,000.00        | \$ 156,000.00        | \$ 156,000.00        |
| ROAD MAINTENANCE CONTRIBUTIONS        | \$ 150.00            |                      |                      |                      |                      |                      |                      |
| CHAPEL USAGE FEES                     | \$ -                 |                      |                      |                      |                      |                      |                      |
| MISCELLANEOUS INCOME                  | \$ -                 |                      |                      |                      |                      |                      |                      |
|                                       | \$ -                 |                      |                      |                      |                      |                      |                      |
| <b>TOTAL INCOME</b>                   | <b>\$ 165,895.39</b> | <b>\$ 135,200.00</b> | <b>\$ 135,200.00</b> | <b>\$ 156,000.00</b> | <b>\$ 156,000.00</b> | <b>\$ 156,000.00</b> | <b>\$ 156,000.00</b> |
| <b>EXPENSES</b>                       |                      |                      |                      |                      |                      |                      |                      |
| POST OFFICE BOX RENTAL                | \$ -                 | \$ 100.00            | \$ 100.00            | \$ 100.00            | \$ 100.00            | \$ 100.00            | \$ 100.00            |
| ANNUAL MEETING                        | \$ -                 | \$ 500.00            | \$ 500.00            | \$ 500.00            | \$ 500.00            | \$ 500.00            | \$ 500.00            |
| ELECTRICITY-ENTRANCE & CHAPEL         | \$ 726.52            | \$ 827.00            | \$ 950.00            | \$ 950.00            | \$ 950.00            | \$ 1,000.00          | \$ 1,000.00          |
| <b>CHAPEL:</b>                        |                      |                      |                      |                      |                      |                      |                      |
| CHAPEL RENOVATIONS                    | \$ -                 | \$ -                 | \$ 1,000.00          | \$ -                 | \$ 1,000.00          | \$ -                 | \$ 1,000.00          |
| CHAPEL MAINTANCE / PAINT              | \$ -                 | \$ 225.00            | \$ -                 | \$ 2,000.00          | \$ -                 | \$ 2,000.00          | \$ -                 |
| CHAPEL GROUNDS GARDENING              | \$ 134.98            | \$ 700.00            | \$ 500.00            | \$ 500.00            | \$ 750.00            | \$ 750.00            | \$ 750.00            |
| CHAPEL SEASONAL DECORATIONS           | \$ -                 | \$ 200.00            | \$ 200.00            | \$ 200.00            | \$ 200.00            | \$ 200.00            | \$ 200.00            |
| <b>ENTRANCE:</b>                      |                      |                      |                      |                      |                      |                      |                      |
| ENTRANCE CAPITAL EXP                  | \$ 3,400.00          | \$ 6,400.00          | \$ 6,400.00          | \$ 6,400.00          | \$ 7,000.00          | \$ 7,000.00          | \$ 7,000.00          |
| ENTRANCE RENOVATIONS                  | \$ 949.00            | \$ 500.00            | \$ 500.00            | \$ 500.00            | \$ 500.00            | \$ 500.00            | \$ 500.00            |
| ENTRANCE MAINTENANCE/GARDENING        | \$ 825.00            | \$ 1,800.00          | \$ 3,000.00          | \$ 3,000.00          | \$ 3,500.00          | \$ 3,500.00          | \$ 3,500.00          |
| ENTRANCE MISCELLANEOUS                | \$ -                 | \$ 300.00            | \$ 300.00            | \$ 300.00            | \$ 300.00            | \$ 300.00            | \$ 300.00            |
| <b>INSURANCE:</b>                     |                      |                      |                      |                      |                      |                      |                      |
| PROPERTY INSURANCE                    | \$ 5,606.83          | \$ 5,600.00          | \$ 5,700.00          | \$ 5,800.00          | \$ 5,900.00          | \$ 5,900.00          | \$ 5,900.00          |
| DIRECTORS AND OFFICERS INSURANCE      | \$ -                 | \$ -                 | \$ -                 | \$ -                 | \$ -                 | \$ -                 | \$ -                 |
| WEB DESIGN/DOMAIN REGISTRY/DATABASE   | \$ 2,170.00          | \$ 1,000.00          | \$ 500.00            | \$ 500.00            | \$ 500.00            | \$ 500.00            | \$ 500.00            |
| <b>PROFESSIONAL FEES:</b>             |                      |                      |                      |                      |                      |                      |                      |
| PROFESSIONAL LEGAL                    | \$ 1,798.00          | \$ 5,000.00          | \$ 5,000.00          | \$ 5,000.00          | \$ 5,000.00          | \$ 5,000.00          | \$ 5,000.00          |
| PROFESSIONAL ACCOUNTING               | \$ 633.25            | \$ 150.00            | \$ 150.00            | \$ 200.00            | \$ 200.00            | \$ 200.00            | \$ 200.00            |
| PROFESSIONAL POA CONSULTING           | \$ 3,520.00          | \$ 11,800.00         | \$ 11,800.00         | \$ 12,000.00         | \$ 12,500.00         | \$ 12,500.00         | \$ 12,500.00         |
| <b>COMMON GROUNDS:</b>                |                      |                      |                      |                      |                      |                      |                      |
| MOWING (Bi-Weekly + 1 Sidecutting)    | \$ 9,775.00          | \$ 22,000.00         | \$ 23,000.00         | \$ 24,000.00         | \$ 25,000.00         | \$ 26,000.00         | \$ 27,000.00         |
| SNOW REMOVAL                          | \$ 1,817.38          | \$ 4,700.00          | \$ 4,700.00          | \$ 5,000.00          | \$ 5,500.00          | \$ 5,500.00          | \$ 5,500.00          |
| MISCELLANEOUS REPAIRS/MAINTENANCE     | \$ -                 | \$ 1,000.00          | \$ 1,000.00          | \$ 1,000.00          | \$ 1,000.00          | \$ 1,000.00          | \$ 1,000.00          |
| CULVERT MAINTENANCE                   | \$ 400.00            | \$ 1,400.00          | \$ 1,400.00          | \$ 1,400.00          | \$ 1,400.00          | \$ 1,400.00          | \$ 1,400.00          |
| <b>OFFICE SUPPLIES-MISCELLANEOUS:</b> |                      |                      |                      |                      |                      |                      |                      |
| POSTAGE                               | \$ 110.00            | \$ 400.00            | \$ 400.00            | \$ 400.00            | \$ 400.00            | \$ 400.00            | \$ 400.00            |
| PRINTING                              | \$ 71.95             | \$ 400.00            | \$ 400.00            | \$ 400.00            | \$ 400.00            | \$ 400.00            | \$ 400.00            |
| MISCELLANEOUS SUPPLIES/EQUIPMENT      | \$ -                 | \$ 400.00            | \$ 300.00            | \$ 300.00            | \$ 300.00            | \$ 300.00            | \$ 300.00            |
| PROPERTY TAXES                        | \$ -                 | \$ 306.00            | \$ 312.00            | \$ 318.24            | \$ 324.60            | \$ 340.00            | \$ 380.00            |
| ROAD REPAIRS/IMPROVEMENTS (Completed) | \$ 38,313.12         | \$ -                 | \$ -                 | \$ -                 | \$ -                 | \$ -                 | \$ -                 |
| ROAD REPAIRS/IMPROVEMENTS (Planned)   | \$ -                 | \$ 75,000.00         | \$ 75,000.00         | \$ 75,000.00         | \$ 75,000.00         | \$ 75,000.00         | \$ 75,000.00         |
| STATE ASSOCIATION FEE                 | \$ -                 | \$ 200.00            | \$ 200.00            | \$ 200.00            | \$ 200.00            | \$ 200.00            | \$ 200.00            |
| PETTY CASH FUND                       | \$ -                 | \$ 30.00             | \$ 30.00             | \$ 30.00             | \$ 30.00             | \$ 30.00             | \$ 30.00             |
| CAPITAL RESERVE                       | \$ 37,700.00         | \$ 100.00            | \$ 100.00            | \$ 100.00            | \$ 100.00            | \$ 100.00            | \$ 100.00            |
| <b>TOTAL EXPENSES</b>                 | <b>\$ 107,951.03</b> | <b>\$ 140,345.00</b> | <b>\$ 143,542.00</b> | <b>\$ 146,498.24</b> | <b>\$ 148,954.60</b> | <b>\$ 151,020.00</b> | <b>\$ 151,040.00</b> |
| <b>NET INCOME</b>                     | <b>\$ 57,944.36</b>  | <b>\$ (5,145.00)</b> | <b>\$ (8,342.00)</b> | <b>\$ 9,501.76</b>   | <b>\$ 7,045.40</b>   | <b>\$ 4,980.00</b>   | <b>\$ 4,960.00</b>   |
| CARRY FORWARD-PRIOR YEAR              | \$ 34,312.63         | \$ 24,811.00         | \$ 29,166.00         | \$ 20,824.00         | \$ 12,482.00         | \$ 21,983.76         | \$ 29,029.16         |
| <b>YEAR-END BALANCE</b>               | <b>\$ 92,258.99</b>  | <b>\$ 29,166.00</b>  | <b>\$ 20,824.00</b>  | <b>\$ 12,482.00</b>  | <b>\$ 21,983.76</b>  | <b>\$ 29,029.16</b>  | <b>\$ 34,009.16</b>  |

Last Update 9/14/2020

**RESOLUTION BOARD OF DIRECTORS  
MOUNTAIN TOPS PROPERTY OWNERS' ASSOCIATION, INC.**

WHEREAS, the governing documents of Mountain Tops community include the Protective Covenants, which were recorded on November 10, 1986, which are recorded in Deed Book 120, Page 354, et. seq. of the Fannin County, Georgia property records, the Amendment to Protective Covenants, which was recorded on December 30, 1997 in Deed Book 280, Page 725, et. seq. of the Fannin County, Georgia property records, the Corrective Amendment to Protective Covenants, which was recorded on March 6, 2001 in Deed Book 383, Page 850, et. seq. of the Fannin County, Georgia property records; the Adoption of and Amendment to Protective Covenants for Mountain Tops Subdivision Phase II and Forward, which was recorded on February 23, 2010 in Deed Book 920, Page 546 et. seq. of the Fannin County, Georgia property records (hereinafter collectively referred to as the "Declaration"), and the Bylaws of the Mountain Tops Property Owners' Association, Inc., which are not recorded in the Fannin County, Georgia land records, and were executed on March 3, 2009 (the "Bylaws") (the Declaration, as amended, and the Bylaws may hereinafter be collectively referred to as the "Governing Documents");

WHEREAS, the Declaration's restrictive covenants expired on December 11, 2006 pursuant to O.C.G.A. Section 44-3-60, however, the affirmative obligations set forth within the Declaration are unaffected by the expiration of the restrictive covenants pursuant to Georgia law;

WHEREAS, Paragraph 13 of the Declaration, as amended, requires all owners within Phases II and thereafter of the Mountain Tops Community to pay certain assessments and other charges to the Association;

WHEREAS, the Governing Documents grant the Association, acting through the Board of Directors, the authority to collect delinquent assessments and other charges;

WHEREAS, the Board of Directors has determined it to be in the best interest of the Association to establish and adopt a policy providing a uniform process for the collection of delinquent assessments; and

NOW, THEREFORE, the Board of Directors of the Mountain Tops Property Owners' Association, Inc. hereby adopts the following Collection Policy for Phases II and thereafter of the Mountain Tops community;

This 23<sup>rd</sup> day of SEPTEMBER, 2020.

Board of Directors - Mountain Tops Property Owners Association, Inc.

By:  President

Attest:  Secretary

by certified check or money order.

**6. Undue Hardship.** Other than the obligation to pay assessments, the Association may, in its discretion, grant a variance of any provision herein upon petition in writing by an owner demonstrating a personal financial hardship. In such case, the Association is hereby authorized to extend the time for the filing of lawsuits and liens, or to otherwise modify the procedures contained herein, as the Association shall determine appropriate under the circumstances.

**10. Delinquent Account Evaluation.** Nothing in this Policy shall require the Association to take specific actions, and the Association retains the option and right to continue to evaluate and address each delinquency on a case-by-case basis.