



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.

GILMER COUNTY SUPERIOR COURT
 GLENDA SUE JOHNSON, CLERK
 #1 WEST SIDE SQUARE
 ELLIJAY, GA 30540
 (706) 635-4462 PHONE
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GEORGIA, Gilmer County
 Clerk of Superior Court
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Glenda Sue Johnson
 Clerk of Superior Court

RETURN TO: **STEVE NUNLEY**
 16 ADAIR DRIVE
 TAYLORSVILLE, GA. 30178

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
For Rose Ridge Estates Property Owners' Association, Inc.

THIS AGREEMENT is made this 25 day of January, 2001, by Rose Ridge, LLC (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the owner of certain real property in Gilmer County, Georgia, which is more particularly described on Exhibit A attached hereto and made a part hereof.

Declarant intends to develop on lands, including the real property described above, a development to be known as Rose Ridge Estates (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Development, the planned unit development made subject to this Declaration, by the recording of this Declaration. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Development and to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this Declaration and certain other properties described in this Declaration. Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined). The Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration of Covenants, Restrictions and Easements, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The Covenants, Restrictions and Easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

ARTICLE I: DEFINITIONS

The following words, when used in this Declaration of Covenants, Restrictions and Easements, shall have the following meanings:

- 1.01 **Association**. "Association" means Rose Ridge Estates Property Owners' Association, Inc. (a non-profit, non-stock, membership corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.
- 1.02 **Board**. "Board" means the Board of Directors of the Association.
- 1.03 **By-Laws**. "By-Laws" means the By-Laws of the Association.

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- 1.04 Intentionally left blank .
- 1.05 Intentionally left blank
- 1.06 Commencement Date. "Commencement Date" means the date on which the first Residence is sold to a third party other than Declarant or the builder of such Residence.
- 1.07 Common Property. "Common Property" means the roadways conveyed to the Association.
- 1.08 Declarant. "Declarant" means Rose Ridge, LLC and its successors-in-title and assigns, provided any such successors-in-title or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", or the real property which is intended to become part of the Development; provided, further, upon designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto, and which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.
- 1.9 Development-Wide Standard. "Development-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to the Declaration and By-Laws. Such determination, however, must be consistent with the Development-Wide Standard originally established by the Declarant.
- 1.10 Lot. "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Gilmer County, covering any portion of the Property, provided, however, that no portion of the Common Property shall ever be a Lot except as provided in 2.04.
- 1.11 intentionally left blank
- 1.12 intentionally left blank
- 1.13 intentionally left blank
- 1.14 Member. "Member" means any member of the Association.
- 1.15 Membership. "Membership" means the collective total of all Members of the Association.
- 1.16 Occupant. "Occupant" shall mean any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

- 1.17 Owner. "Owner" means the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.
- 1.18 Parcel. "Parcel" shall mean and refer to separately designated residential areas comprised of various types of housing initially or by annexation made subject to this Declaration. If separate Parcel status is desired, the Declarant shall designate in an amendment to this Declaration subjecting the property to the terms and conditions of this Declaration that such property shall constitute a separate parcel or parcels. In the absence of specific designation of separate Parcel status, all property made subject to this Declaration shall be considered a part of the same parcel. The Board may also grant Parcel status to any area if so requested in writing by the Owners holding at least seventy-five percent (75%) of the total vote entitled to vote thereon in such area.
- 1.19 Property. "Property" means that certain real property hereinabove described together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Article X hereof.
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- 1.21 Intentionally left blank
- 1.22 Residence. "Residence" shall mean a structure situated upon a portion of the Development intended for independent use and occupancy as a residence for a single family. A structure and the land owned as a part thereof shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Residence shall have been conveyed to a third party other than the builder thereof. The owner of a Residence shall notify the Association or its design immediately upon issuance of a Certificate of Occupancy for the Residence.
- 1.23 Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.
- 1.24 Structure. "Structure" means:
- (a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, dock, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

- (b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and
- (c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.24 applies to such change.

ARTICLE II: COMMON PROPERTY

- 2.01 Conveyance of Common Property. Other than the roadways set forth separately herein, there shall be no common property conveyed to the Association.
- 2.02 Maintenance. The Association shall, at its sole expense, maintain and keep in good repair the roadways. Without limiting the foregoing, the maintenance obligations of the Association shall include, without limitation, the following: maintenance, repair and replacement of all roads through, across and/or into the Development; maintenance, repair and replacement of grass and other landscaping treatments located along or in dedicated rights of way, and storm water drainage and detention facilities (whether located on Lots or Common Property), which were previously installed by Declarant, and are not otherwise maintained by the appropriate county or municipal entity having jurisdiction over such improvements, and to the extent permitted by the applicable governmental authority; and maintenance, repair and replacement of all wooden traffic control, safety, and street signs, as well as all roads within the property described on Exhibit "A" as well as any and all easement roads which maintenance, repair, and replacement shall be effected in a timely manner so as to protect the health and welfare of the residents and general public. The road maintenance obligations hereby may not be reduced by amendment or otherwise.
- 2.03 All of the foregoing maintenance shall be performed consistent with the Development-Wide Standard. The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit Owners.

ARTICLE III: ROSE RIDGE ESTATES PROPERTY OWNERS' ASSOCIATION, INC.

- 3.01 Purposes, Powers and Duties of The Association. The Association shall be formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of the Development. To the extent, and only to the

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extent, necessary to carry out such purpose, the Association

- (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and
 - (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.
- 3.02 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only when such Owner is no longer an owner of property within the Development. For purposes of voting, there shall be two (2) classes of Members as set forth in Section 3.03.
- 3.03 Voting Rights.
- (a) Each Owner, with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Residence; where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.
 - (b) The Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot or Residence owned; however, the Class B Member have no less than one more vote than the total number of Class A votes. The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.08 below.
 - (c) The Development will be composed of Lots to be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Gilmer County in Accordance with Article X of this Declaration. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in Accordance with the formula set forth in subsection (b) of this Section 3.03 and in no event shall Class B Membership cease and be converted to Class A Membership (as provided in subsection (b) of this Section 3.03) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subjected to this Declaration.
- 3.04 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The

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number of Directors and the method of election of Directors shall be as set forth in the By-Laws of the Association.

3.05 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

- (a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14 or 8.02 hereof;
- (b) shall be delinquent in the payment of any fee levied by the Association pursuant to the provisions of Article IV hereof; or
- (c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.06 Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

3.07 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.

3.08 Control by Declarant.

- (a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association and any officer or officers of the Association until 15 days after the first of the following events shall occur:
 - (i) the expiration of sixty (60) years after the date of the recording of this Declaration;
 - (ii) the date upon which 90% of the Residences intended by Declarant to be a part of the Development have been conveyed by Declarant to Owners other than a person or persons related within the third degree of consanguinity to either Declarant; or

- (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant, provided, however, that the Owners shall be entitled to elect certain members of the Board of the Association in Accordance with the terms of the By-Laws of the Association which shall not be removable by the Declarant acting alone.
- (b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots; and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board and Declarant shall deliver the books, Association records, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by Association acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IV: FEES

- 4.01 Covenant for Fees and Creation of Lien and Personal Obligation. Each Owner of a Residence or a Lot, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by Association acceptance of a deed for a Residence, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:
- (a) to pay to the Association the annual fees which may or shall be levied by the Association pursuant to this Declaration against all Residences or Lots owned by him;
 - (b) to pay to the Association any Parcel, special, or specific fees for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Residences or Lots owned by him;
 - (c) intentionally left blank
 - (d) that there is hereby created a continuing charge and lien upon all Residences or Lots owned by him against which all such fees are made to secure payment of such fees and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees;

- (e) that such continuing charge and lien on such Residence or Lot binds such Residence or Lot in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Residences or Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Residence or Residences (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction repair or alteration of Structures.
 - (f) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence or Lot from liability for any fee thereafter assessed;
 - (g) that all annual, Parcel, special, and specific fees (together with interest thereon as provided in Section 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Residence or Lot owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Residence or Lot as provided in Section 4.01(d) of this Declaration) a personal obligation which will survive any sale or transfer of the Residence or Lot owned by him.
- 4.02 Purpose of Fee. The fees levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the new community of the Development, including, but not limited to, road maintenance and repair, the enforcement of the Restrictions contained in this Declaration, the payment of operating costs and expenses of the Association, and the payment of all principal and interest when due on all debts owed by the Association.
- 4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual fees or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Fees in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.
- 4.04 Annual Fee.
- (a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Residence shall be subject to an annual fee of one hundred dollars (\$100.00) per Residence; provided, however, that the annual fee for each Lot shall equal one-half (½) the annual fee per Residence. In the event that the Commencement Date falls on a day other than January 1, the annual fee for such year shall be

prorated so that each Owner pays an annual fee proportional to the number of days remaining in the calendar year. The words "Fee Year" as used herein shall mean the calendar year with the first Fee Year commencing on January 1 of the year immediately following the Commencement Date. For so long as Declarant has the right to appoint and remove Directors and Officers of the Association, the annual fee shall not be reduced below \$100.00 without the express written consent of Declarant.

- (b) Commencing with the first Fee Year and continuing thereafter, the annual fee may be increased at any time and from time to time during each Fee Year not more than ten percent (10%) above the annual fee for the previous Fee Year without a vote of the Membership.
- (c) Commencing with the first Fee Year and continuing thereafter, the annual fee for each Fee Year may at any time and from time to time be increased more than ten percent (10%) for each year of the existence of this Declaration if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in Associationordance with the provisions of the By-Laws of the Association and this Declaration.

4.05 Special and Parcel Fees.

- (a) There shall be no special or parcel fees.

4.06 Fee Procedure.

- (a) The Board shall establish the annual fee for each Fee Year at an amount not in excess of the maximum annual fee as determined by the provisions of this Article IV, and shall also establish the date during the Fee Year on which the annual fee shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that portion of such costs will be covered by Special Fee. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual fee and the Due Date. The annual fee shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual fee in installments during the Fee Year. The Board shall also establish payment procedures for payment of any special fees for capital improvements which may be levied in Associationordance with the provisions of this Article IV.
- (b) All Members of the Association shall be given written notice by the Board not less than thirty

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(30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) and Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

- (c) Action by the Members of the Association pursuant to Section 4.04(c) may be taken at a meeting without the notice required pursuant to Section 4.06(b) provided that Members or proxies entitled to cast sixty percent (60%) of the total votes outstanding shall be present.

4.07 Uniform Rate of Fee. Annual, special and parcel fees shall be levied against Residences and Lots. Both annual and special fees must be fixed at a uniform rate for all Residences and for all Lots.

4.08 Contribution By Declarant. For so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, Declarant shall not be liable for the payment of any fees. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of annual, special and specific fees collected by the Association in any Fee Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

4.09 Effect of Nonpayment of Fees. Any fee which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an fee, the Board may declare any remaining balance of the fee at once due and payable. In the event that an owner shall fail to pay fully any portion of any fee prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in Association ordinance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Residence enforceable in Association ordinance with the provisions of this Declaration.

4.10 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable

period of time issue and furnish to such Owner a written certificate stating that all fees (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all fees, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

- 4.11 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special fee shall be made without the Approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.
- 4.12 Specific Fees. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to 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 may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:
- (a) Expenses of the Association which benefit less than all of the Residences or Lots, which may be specifically assessed equitably among all of the Residences or Lots which are benefited Associationording to the benefit received;
 - (b) Expenses incurred by the Association pursuant to Sections 4.02, 4.05 and 5.03.
 - (c) Reasonable fines as may be imposed in Associationordance with the terms of the Declaration and By-Laws.

ARTICLE V: INTENTIONALLY LEFT BLANK

ARTICLE VI: GENERAL COVENANTS AND RESTRICTIONS

- 6.01 Application. The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.
- 6.02 Restriction of Use. Lots may be used for single-family residences only (not to exclude home-offices as long as such offices are not open to the public) and for no other purpose provided that Declarant may operate a Sales Office and/or Model Home on a Lot or Lots designated by Declarant. Residences

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shall not contain less than 1,600 sq ft of heated space, including not less than 900 sq ft on the ground floor. All houses shall be complete within 180 days (6 months) of initial start. Known exceptions at start shall be approved in advance by the Association. Improvements, including those needed due to fire or other disasters, shall not be allowed to remain in an unfinished state for more than 120 days from start of construction. All utilities shall be run underground from street.

- 6.03 Re-subdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the Association of plans and specifications for such split, division or subdivision. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter; and, provided further, that the Owner of the Residence on such Lot shall be responsible for annual and special fees based on the number of Lots combined in one lot. Excavation shall meet the current guidelines for soil and sedimentation control and seeding practices of Gilmer County code. No silt or other drainage arising directly or indirectly from construction or any other activity shall be permitted to enter upon the lot of another owner. Any violation of any land disturbance ordinance or law, or other land use regulation, shall be a violation hereof.
- 6.04 Erosion Control. Erosion control shall be the responsibility of the property owner and shall be performed in compliance with all applicable laws, rules, and regulations.
- 6.05 Landscaping. Landscaping shall be completed within 90 days of completion of house.
- 6.06 Trees. No mass removal of trees will be allowed unless such is necessary for construction, or to prevent a hazard. Furthermore, no large trees (trees having a diameter of three inches or more measured from a point two (2) feet above ground level) shall be removed from the property except in connection with the reasonable requirements of construction and landscaping, or where such trees are dead, damaged or present a hazard.
- 6.07 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in Association ordinance with plans and specifications therefor approved by the Association. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such lot. Outbuildings and storage buildings should be compatible with outside materials on the house.
- 6.08 Signs.
- (a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the Association's prior written approval of plans and specifications therefor, be installed, altered or any Lot, or on any portion of a Structure visible from the exterior thereof except:

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sale" sign, such sign having a maximum surface area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and, provided, further, that if, at the time of any desired use of such sign, the Association is making "For Sale" signs/available for the use Owners, the signs made available by the Association must be used;
- (iii) directional signs for vehicular or pedestrian safety in Association ordinance with plans and specifications approved by the Association; and
- (iv) if the the Association determines to establish one or more central mail box locations, then individual mail boxes shall be prohibited.

For rent signs are prohibited.

- (b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the Association. All job identification signs shall be removed upon completion of house.
- 6.09 Setbacks. In approving plans and specifications for any proposed Structure, the Gilmer County Code and other applicable public laws and ordinances, and the restrictions contained herein, shall be the source of governing authority. No Structure shall be erected or placed on any Lot unless its location is consistent with such authorities.
- 6.10 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the Association of plans and specifications for such fences and walls. Property owners should make sure that the fences as well as any outbuildings are compatible and of similar design, color, and structure to their homes.
- 6.11 Roads and Driveways. Roads and driveways should have proper culverts/tiles installed where necessary/required by county. All driveways should have either asphalt, concrete or an all weather gravel surface. Any damage or disturbance to a road or water system in the subdivision in connection with construction or any other activity on a lot, either directly or indirectly, shall be responsibility of the owner of such lot. Such owner shall, at a minimum, restore the road and water system and any other damage, as nearly as practical, to its former condition, at such owner's sole expense.
- 6.12 Antennae, Etc. No antennae shall be installed or used for the purpose of transmitting of electronic signals if such is determined to interfere with any electronic signal reception by any Owner. Large satellite dishes or antennae shall be kept in the back of the home, behind a screen acceptable to the Association.

- 6.13 Clotheslines, Garbage Cans, Etc. All clotheslines, equipment, garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only. All garbage must be stored and disposed of in plastic or rubberized garbage cans. The use of plastic bags for such storage or disposal is prohibited. The use of metal garbage cans or containers is prohibited.
- 6.14 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curbing of the right-of-way bordering said Lot. If in the opinion of the Association, any Owner shall fail to perform the duties imposed by this Section, the Association shall notify the Association. If the Board shall agree with the determination of the Association with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.
- 6.15 Commercial and Recreational Vehicles and Trailers. No commercial vehicle, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours in any calendar month. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space approved by the Association and is concealed from view by neighboring residences and streets.
- 6.16 Recreational Equipment. Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the Association. Basketball goals may be placed adjacent to the driveway, but the Association must approve the specific color and location thereof. No above ground pool shall be allowed.
- 6.17 Non-Discrimination. No Owner or person authorized to act for an Owner shall refuse to sell, after receiving a bona fide offer, or refuse to negotiate for the sale of, or otherwise make unavailable or deny the purchase of any Lot or Residence to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.
- 6.18 Animals. No agricultural animals may be kept on any Lot and no animals, including birds, insects, and

reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the Association and are compatible with the home. No free-roaming pets will be allowed.

6.19 Solid Waste.

- (a) No person shall dump rubbish, garbage, or any other form of solid waste or hazardous material as defined in the federal, state or local environmental laws (RCRA, CERCLA, etc) on any Lot or on Common Property.
- (b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property; No brush or debris from clearing or excavation shall be buried or disposed of on a lot except as approved by the appropriate governmental authority;
- (c) Except for building materials employed during the course of construction of any Structure approved by the Association, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to Accumulate on any Lot unless screened from view from any other property.
- (d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide Access to persons making such pick-up. At all other times such containers shall be screened from view from any other property.

- 6.20 Nuisances No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the community, including, but not limited to, loud music or vehicle engines.

ARTICLE VII: EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 Easements.

- (a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:
 - (i) the erection, installation, construction and maintenance of wires, lines, conduits and

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- poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;
- (ii) the erection, installation, construction and maintenance of storm-water drains, land drains, storm water drainage and detention facilities, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;
 - (iii) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and
 - (iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.
- (b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.
- 7.02 **Easement Area**. The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements, storm water drainage and detention facilities, are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.
- 7.03 **Entry**. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in Association ordinance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.01.
- 7.04 **Zoning and Private Restrictions**. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration the most restrictive provision shall govern and control.

ARTICLE VIII: ENFORCEMENT

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- 8.01 **Right of Enforcement.** This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns.
- 8.02 **Right of Abatement.**
- (a) Except where different notice provisions are provided in Sections 5.11 and 6.14, in the event of a violation or breach of any Restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.
- (b) The Right of Abatement, as used in this Section and in Sections 5.11 and 6.14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or structure, as to which a violation breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in Association ordinance with the provisions of this Section, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 18% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may or in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such lien for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01 hereof and (iii) all deeds to secure debt succeeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.
- 8.03 **Specific Performance.** Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure Association urately in money the damages which will Association rue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.04 Collection of FEES and Enforcement of Lien.

- (a) If any fee, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such fee, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.
- (b) As an additional remedy, but in no way as a limitation on the remedies, if any fee, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Gilmer County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Gilmer County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of fee, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.
- (c) WAIVER. EACH OWNER, BY Association EPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN Association ORDANCE WITH THE PROVISIONS OF THIS

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DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

- 8.05 **No Waiver.** The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX: DURATION AND AMENDMENT

- 9.01 **Duration.** This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of sixty (60) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Gilmer County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years provided, however, that after the end of the said sixty (60) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the office of the Clerk of the Superior Court of Gilmer County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of those Class A Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in Association ordinance with the provisions of the By-Laws of the Association.
- 9.02 **Amendments by Declarant.** During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Gilmer County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by Association acceptance of a deed or other conveyance to a Lot, agrees to be bound by such

amendments as are permitted by this Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 9.02 hereof, shall be proposed and adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.
- (c) The agreement of the required percentage of the owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the Agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

ARTICLE X: ANNEXATION

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For so long as Declarant has authority to appoint and remove Directors and Officers of the Association, additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such annexation shall be Association accomplished by filing in the Office of the Clerk of the Superior Court of Gilmer County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or filing an amendment to the Declaration which has been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant. At the expiration of Declarant's right to appoint and remove Directors and Officers of the Association, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (1) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in Association ordinance with the provisions of the By-Laws of the Association.

ARTICLE XI: MISCELLANEOUS

The Association agrees to indemnify and hold harmless Declarant from any claim or cause of action arising out of the performance of this Declaration or any of parts thereof, the use or misuse of any equipment or materials, or the payment or non-payment of a supplier or subcontractor of the Association pursuant to the following provisions:

- (a) "Indemnification Claim" shall mean a claim for indemnification hereunder.
- (b) "Indemnatee" shall mean Rose Ridge, LLC and its agents, representatives, employees, officers, directors, shareholders, controlling persons and affiliates.
- (c) "Indemnitor" shall mean Rose Ridge Estates Property Owners' Association, Inc.
- (d) "Indemnitor Representative" shall mean Steve and Denise Nunley, or either of them, until other person is elected by the Association.
- (e) "Losses" shall mean any and all demands, claims, actions or causes of action, FEES, losses, diminution in value, damages (including special and consequential damages), liabilities, costs, and expenses, including without limitation, interest, penalties, cost of investigation and defense, and reasonable attorneys' and other professional fees and expenses.
- (f) "Third Party Claim" shall mean any claim, suit of proceeding (including, without limitation, a binding arbitration or an audit by any taxing authority) that is instituted against Indemnatee by a person or entity other than Indemnitor and which, if prosecuted successfully, would result in a Loss for which such Indemnatee is entitled to indemnification hereunder.
- (g) Subject to the terms and conditions of this Paragraph, Indemnitor agrees to indemnify, defend,

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and hold harmless Indemnitee from, against, for and in respect of any and all Losses asserted against, or paid, suffered or incurred by, Indemnitee and resulting from, based upon, or arising out of:

- (i) the inaccuracy, untruth, incompleteness or breach of any representation or warranty of Indemnitor contained in or made pursuant to this Agreement or in any certificate, Schedule, or Exhibit furnished by Indemnitor in connection herewith [and for purposes of this subsection any qualification of such representations and warranties by reference to the materiality of matters stated therein, and any limitation of such representations and warranties as being "to the knowledge of," or "known to" or words of similar effect, shall be disregarded, in determining any inaccuracy, untruth, incompleteness or breach thereof];
 - (ii) a breach of or failure to perform any covenant or agreement of Indemnitor made in this Agreement;
- (h) An Indemnification Claim shall be made by Indemnitee by delivery of a written notice to the Indemnitor Representative requesting indemnification and specifying the basis on which indemnification is sought and the amount of asserted Losses and, in the case of a Third Party Claim, containing (by attachment of otherwise) documents as Indemnitee shall have concerning such Third Party Claim.
- (i) If the Indemnification Claim involves a matter other than a Third Party Claim, the Indemnitor Representative shall have ten (10) days to object to such Indemnification Claim by delivery of a written notice of objection to the Indemnitee specifying in reasonable detail the basis for such objection. Failure to timely so object shall constitute a final and binding Association eptance of the Indemnification Claim by the Indemnitor Representative on behalf of Indemnitor, and the Indemnification Claim shall be paid in Association ordance with the terms hereof. If an objection is timely interposed by the Indemnitor Representative and the dispute is not resolved by the Indemnitee and the Indemnitor Representative within fifteen (15) days from the date the Indemnitee receives such objection, such dispute shall be resolved by arbitration as provided in Paragraph _____ of this Agreement.
- (j) Upon determination of the amount of an Indemnification Claim, whether by agreement between the Indemnitor Representative and the Indemnitee or by an arbitration award or by any other final adjudication, the Indemnitor shall pay the amount of such Indemnification Claim within ten (10) days of the date such amount is determined.
- (k) The obligations and liabilities of the parties hereunder with respect to a Third Party Claim shall be subject to the following terms and conditions: The Indemnitee shall give the Indemnitor Representative written notice of a Third Party Claim promptly after receipt by the Indemnitee of notice thereof, and the Indemnitor Representative, on behalf of the Indemnitor,

may undertake the defense, compromise and settlement thereof by representatives of its own choosing reasonably Association eptable to the Indemnitee. The failure of the Indemnitee to notify the Indemnitor Representative of such a claim shall not relieve the Indemnitor of any liability that they may have with respect to such claim except to the extent the Indemnitor Representative demonstrates that the defense of such claim is prejudiced by such failure. The assumption of the defense, compromise and settlement of any such Third party Claim by the Indemnitor Representative shall be an acknowledgment of the obligation of the Indemnitor to indemnify the Indemnitee with respect to such a claim hereunder. If the Indemnitee desires to participate in, but not control, any such defense, compromise and settlement, of such claim with counsel of its own choosing it may do so. In the circumstances described in the preceding sentence, the Indemnitee shall, promptly upon its assumption of the defense of such claim, make an Indemnification Claim that is not a Third Party Claim for the purposes of the procedures set forth herein. If, in the reasonable opinion of the Indemnitee, any Third Party Claim or the litigation or resolution thereof involves an issue or matter which could have a material adverse effect on the business, operations, assets, properties or prospects of the Indemnitee or the performance or continuation of the Contract (including, without limitation, the administration of the tax returns and responsibilities under the tax laws of the Indemnitee), the Indemnitee shall have the right to control the defense, compromise and settlement of such Third Party Claim undertaken by the Indemnitor Representative, and the costs and expenses of the Indemnitee in connection therewith shall be included as part of the indemnification obligations of the Indemnitor hereunder. If the Indemnitee shall elect to exercise such right, the Indemnitor Representative shall have the right to participate in, but not control, the defense, compromise and settlement of such Third Party Claim at its sole cost and expense. No settlement of a Third Party Claim involving the asserted liability of the Indemnitor under this Paragraph shall be made without the prior written consent by or on behalf of the Indemnitor Representative, which consent shall not be unreasonably withheld or delayed. Consent shall be presumed in the case of settlements of \$10,000 or less where the Indemnitor Representative has not responded within five (5) business days of notice of a proposed settlement. If the Indemnitor Representative assumes the defense of such a Third party Claim, no compromise or settlement thereof may be effected by the Indemnitor Representative without the Indemnitee's consent unless

- (i) there is no finding or admission of any violation of law or any admission of any violation of law or any violation of the rights of any person and no effect on any other claim that may be made against the Indemnitee
- (ii) the sole relief provided is monetary damages that are paid in full by the Indemnitor and
- (iii) the compromise or settlement includes, as an unconditional term thereof, the giving by the claimant or the plaintiff to the Indemnitee of a release, in form and substance satisfactory to the Indemnitee, from all liability in respect of such Third Party Claim.

The Indemnitee shall have no liability with respect to any compromise or settlement thereof effected without its consent. In connection with the defense, compromise or settlement of any Third Party Claim, the parties to this Agreement shall execute such powers of attorney as may reasonably be necessary or appropriate to permit participation of counsel selected by any party hereto and, as may reasonably be related to any such claim or action, shall provide Association access to the counsel, Association outants and other representatives of each party during normal business hours to all properties, personnel, books, tax records, contracts, commitments and all other business records of such other party and will furnish to such other party copies of all such documents as may reasonably be requested (certified, if requested). The rights of the Indemnitee under this Paragraph ___ are independent of and in addition to such rights and remedies as the Indemnitee may have at law or in equity or otherwise based upon any inaccuracy, untruth, incompleteness or breach of any representation or warranty of any Indemnitor contained herein or in any certificate, schedule or exhibit furnished by such party in connection herewith, or based upon the failure of an Indemnitor to perform any covenant, agreement or undertaking required by the terms hereof to be performed by such Indemnitor, including without limitation the right to seek specific performance, recession or restitution, none of which rights or remedies shall be affected or diminished hereby. The liability of the Indemnitor with respect to any Indemnification Claim shall be reduced by the tax benefit actually realized and any insurance proceeds received by the Indemnitee as a result of any Losses upon which such Indemnification Claim is based, and shall include any tax detriment actually suffered by the Indemnitee as a result of such Losses. The amount of any such tax benefit or detriment shall be determined by taking into Association out the effect, if any and to the extent determinable, of timing differences resulting from the Association eleration or deferral of items of gain or loss resulting from such Losses and shall otherwise be determined so that payment by the Indemnitor of the Indemnification Claim, as adjusted to give effect to any such tax benefit or detriment, will make the Indemnitee as economically whole as is reasonably practical with respect to the Losses upon which the Indemnification Claim is based. Any dispute as to the amount of such tax benefit or detriment shall be resolved by arbitration as provided in Paragraph ___ of this Agreement. Upon payment in full of any Indemnification Claim the Indemnitor shall be subrogated to the extent of such payment to the rights of the Indemnitee against any person or entity with respect to the subject matter of such Indemnification Claim or Third Party Claim.

Time is of the essence to this Agreement. No party may transfer or assign any of its rights or obligations pursuant to this Agreement without the written consent of the other party obtained prior thereto. In the event of any dispute concerning any matter between the parties hereto said dispute shall be resolved by arbitration pursuant to the then-current rules of the American Arbitration Association. Such arbitration, unless otherwise agreed, shall occur in Gilmer County, Georgia. In the event that either side should fail to advance its half of the arbitration fee, then such issues as may be before the arbitrator shall be resolved, without hearing, in favor of the side which has advanced its portion of said fee. In any such arbitration proceeding, and any court proceedings and appeals to compel arbitration or to enforce an arbitration award, the prevailing party shall recover, in addition to its award, its reasonable attorney fees for such proceedings. Notwithstanding the

foregoing sentence, any party to this agreement may, upon having been presented with a demand to arbitrate and prior to the announcement of a decision by the arbitrator(s), present to the other party to the dispute a written "Offer of Judgment"; in the event that the ultimate decision of the arbitrator(s) is less than 125% of the amount of the "Offer of Judgment", then the offering party shall receive as part of the arbitration award an award of its reasonable attorney fees (or a reduction in the amount of the arbitration award against it, as may be applicable, by the amount of said reasonable attorney fees) from that point in time which is thirty days after the receipt by the other party of the "Offer of Judgment" and the non-offering party shall not receive any award of attorney fees for such period of time commencing thirty days after receipt of the Offer of Judgment notwithstanding it having prevailed. The Offer of Judgment contemplated herein may be Association epted by unequivocal written notice given within thirty days of receipt; if it is not Association epted within said thirty day period the right to Association ept it is lost but the attorney fee provisions above shall continue to apply. Each party hereto indemnifies and holds harmless each other party hereto from all claims or causes of action arising out of such party's failure to perform its obligations under this agreement or which claims or causes of action have been warranted against by such party hereto; this indemnity provision shall include reasonable attorney fees. All notices required by this Agreement to be given shall be deemed given five days after deposit of said notice in the U.S. Mail, return receipt requested, with adequate postage thereon addressed to all other parties at their addresses set forth above, or to such other address as any party may give to all other parties in writing. This Agreement shall be interpreted Association ording to the laws of the State of Georgia where exclusive jurisdiction over the parties shall lie. This Agreement constitutes the entire agreement between the parties; no prior agreements between the parties shall in any way contradict or vary the terms hereof. All warranties of this Agreement shall survive any event contemplated herein. This Agreement may not be amended or supplemented except by a writing executed by the parties hereto. No failure of any party to require strict compliance with the provisions hereof, and no custom or practice of the parties that varies with the terms hereof, shall constitute a waiver of any party's rights to demand exact compliance with the provisions of this Agreement. In interpretation of this Agreement, if necessary, no presumption shall attach as against the author hereof, this Agreement having been mutually negotiated between and among the parties hereto.

11.07 Insurance

- (a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with
 - (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and
 - (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the

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certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.

- (b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special fee. Additional FEES may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

- (c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.
- (d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federation housing Administration, their successors and assigns, for similar type residential subdivision communities.

11.08 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions

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shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

ARTICLE XII: Mortgage Provisions

The following provisions are for the benefit of holders of first Mortgages or Deeds to Secure Debt (hereafter "First Mortgage") on Residences in the Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

- 12.01 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage or Deed to Secure Debt (hereafter "Holder"), who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:
- (a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Residence on which there is a first mortgage held, insured, or guaranteed by such eligible Holder;
 - (b) any delinquency in the payment of FEES or charges owed by an Owner of a Residence subject to the First Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any Holder, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residence of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;
 - (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
 - (d) any proposed action which would require the consent of a specified percentage of eligible mortgagees.
- 12.02 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first mortgagees or at least two-thirds (2/3) of the total Members of the Association vote entitled to vote thereon consent, the Association shall not:
- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);

- (b) change the method of determining the obligations, fees, dues, or other charges which may be levied against an Owner of a Residence;
- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);
- (d) fail to maintain insurance, as required by this Declaration.
- (e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

Holders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

- 12.03 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.
- 12.04 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Residence.
- 12.05 Amendment by Board. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.
- 12.06 Veterans Administration Approval. As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article X, the following actions shall require the prior approval of the Veterans Administration so long as the Veterans Administration is guaranteeing any mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in Association ordinance with Article X, pursuant to a plan of annexation previously approved by the Veterans Administration; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

- 12.07 Applicability of Article XII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.
- 12.08 Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

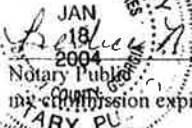
Witness:

Rose Ridge, LLC

Iran Salask

By: [Signature]
Manager **STEVE NUNLEY**

Sworn to and subscribed before me this 25th day of January, 2000.



Notary Public, Bartow County, Georgia
My Commission Expires January 18, 2004

The Association, by the execution hereof, acknowledges the agrees that the Association is hereby bound by all of the Association's obligations under this Declaration of Covenants, Restrictions and Easements.

IN WITNESS WHEREOF, the Association, acting through its duly authorized officer, has caused this Declaration to be executed and sealed this 25th day of January, 2000.

Witness:

Rose Ridge Estates Property Owners' Association, Inc.

Iran Salask

By: [Signature]
President **STEVE NUNLEY**

Sworn to and subscribed before me this 25th day of January, 2000.



Notary Public, Bartow County, Georgia
My Commission Expires January 18, 2004

GILMER COUNTY SUPERIOR COURT
GLENDA SUE JOHNSON, CLERK
#1 WEST SIDE SQUARE
ELLIJAY, GA 30540
(706) 635-4462 PHONE
(706) 635-1462 FAX

GEORGIA, Gilmer County
Clerk of Superior Court
Filed for Record 1-29-01
At 4:30 PM Recorded 1-31-01
Book 752 Page 262
Glenda Sue Johnson
Clerk of Superior Court

RETURN TO:

STEVE NUNLEY
16 ADAIR DRIVE
TAYLORSVILLE, GA. 30178

3.521GCLDO

Disclosure

Rose Ridge, LLC, Declarant herein, hereby gives notice - pursuant to the above-named Gilmer County Ordinance, that the roads lying within the development known as Rose Ridge Estates and to be controlled by Rose Ridge Estates Property Owners Association, Inc. are private in ownership and do not, or may not, and will not ever or may not ever meet the requirements applicable to converting the roads from private ownership and maintenance to public ownership and maintenance.

In witness whereof the Declarant has caused this Disclosure to be executed this 25 day of January, 2001.

Witness:
Herman Clark

Rose Ridge, LLC
By: *[Signature]*
Manager **STEVE NUNLEY**

Notary Public:
Kimberly Lapers
My Commission Expires February 28, 2004

GEORGIA, Gilmer County
Clerk of Superior Court
Filed for Record 7-31-02
At 8:58 A. M. Recorded 7-31-02
Book 877 Page 133
Colinda Ann Johnson
Clerk of Superior Court

*Rose Ridge Estates
Property Owners Association*

**AMENDMENTS TO
General Covenants and Restrictions**

6.02 Restrictions of Use Lots may be used for single-family residences only (not to exclude home-offices as long as such offices are not open to the public) and for no other purpose provided that Declarant may operate a sales office and/or model home on a lot or lots designated by declarant. Residences shall not contain less than 950 square feet and can be either a conventional stick built home or modular home. Modular homes must be five (5) years or newer from date of lot purchase, must be properly underpinned and adequate tie downs that meet Gilmer County requirements and codes. Underpinning must concur with the color and style of the home.

6.15 Commercial and Recreational Vehicles and Trailers. Statements listed in this paragraph do not refer to modular homes that are primary residences and meet all required criteria.

Francis Q. Talasek
Notary



Rose Ridge LLC
By: *[Signature]*
Manager, Steve Nunley

Francis Q. Talasek
Notary



Rose Ridge Property Owners Assoc
By: *[Signature]*
President, Steve Nunley

**ROSE RIDGE ESTATES PROPERTY
OWNERS ASSOCIATION**

**Amendments to General Covenants
and Restrictions**

6.02 **Restrictions of Use.** No term, word, phrase or paragraph contained in the "Declaration of Covenants, Restrictions and Easements For Rose Ridge Estates Property Owners' Association, Inc.", recorded in Deed Book 752 beginning at Page 232 of the Gilmer County, Georgia Deed Records or in the "Amendments To General Covenants and Restrictions", recorded in Deed Book 877, Page 133 of the Gilmer County, Georgia Deed Records, shall prohibit, forbid, or exclude nor be construed to prohibit, forbid, or exclude the placement in the subdivision of manufactured housing or houses.

This the 29th day of September, 2006.

Robert J. Conroy
Witness

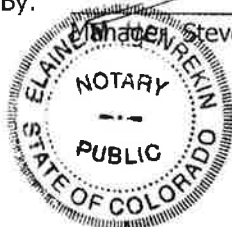
Rose Ridge, LLC

By:



Manager, Steve Nunley

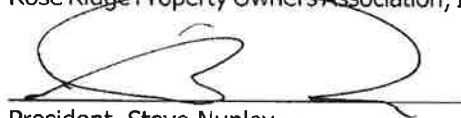
Elaine M. Henrekin
Notary Public
Affix Notary Seal
Comm. Expires: 01-24-08



Rose Ridge Property Owners Association, Inc.

D. Wagner
Witness

By:



President, Steve Nunley

Elaine M. Henrekin
Notary Public
Affix Notary Seal
Comm. Expires: 01-24-08

