



## 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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GLENDA SUE JOHNSON  
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GILMER COUNTY

Cross Reference:  
Deed Book 1210, Page 40,  
Gilmer County, Georgia Records

Return to:  
Bodker, Ramsey, Andrews,  
Winograd & Wildstein, P.C.  
3490 Piedmont Road, Suite 1400  
Atlanta, Georgia 30305

## AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS

FOR

### THE PRESERVE AT MOUNTAINTOWN CREEK

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS is made effective on this 20<sup>th</sup> date of April, 2006 by Mountaintown Waters, LLC, a Georgia limited liability company (hereinafter sometimes called "Declarant") and amends, restates, supersedes and replaces in their entirety, all previous Declarations of Protective Covenants for The Preserve at Mountaintown Creek, whether or not filed of record with the Clerk of Superior Court of Gilmer County, including without limitation, The Preserve at Mountaintown Declarations of Restrictions, Covenants and Conditions filed at Deed Book 1210, Pages 40 through 76, Gilmer County, Georgia records;

#### WITNESSETH

WHEREAS, Declarant is the owner of the Subject Property (as defined below in Article II, Section 2.01 of this Declaration); and

WHEREAS, Declarant desires to subject the Subject Property to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

WHEREAS, Declarant seeks to develop the Subject Property in a manner which insures the full enjoyment of the natural advantages of the Subject Property for all who acquire any right, title or interest in all or any portion of land therein;

WHEREAS, firm, but necessary, constraints will be used to maintain the integrity of the project;

NOW, THEREFORE, Declarant hereby declares that the Subject Property is hereby subjected to the provisions of the Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE GEORGIA CONDOMINIUM ACT, O.C.G.A. SECTION 44-3-70, ET SEQ.

**ARTICLE I**  
**DEFINITIONS**

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in this Article I below.

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

(a) "Association" shall mean and refer to The Preserve at Mountaintown Property Owners Association, Inc., a Georgia Nonprofit Corporation, its successors and assigns.

(b) "Board" shall mean the Board of Directors of the Association.

(c) "By-Laws" shall refer to the By-Laws of The Preserve at Mountaintown Property Owners Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.

(c) "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the owners.

(d) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A", attached hereto, being the same property as described in (i) the Final Plat for The Preserve at Mountaintown Creek Phase I located in Land Lots 39, 40, 69 and 70, 11<sup>th</sup> District, 2<sup>nd</sup> Section, (lots 1 through 36), Gilmer County, Georgia as recorded in Plat Book 46, Pages 100 through 104, Gilmer County, Georgia records as well as (ii) the Final Plat for The Preserve at Mountaintown Creek Phase II located in Land Lots 39, 40, 69, 70, 75 and 76, 11<sup>th</sup> District, 2<sup>nd</sup> Section, (lots 39 through 160), Gilmer County, Georgia as recorded in Plat Book 46, Pages 174 through 180, Gilmer County, Georgia records and (A) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) by Supplementary Declaration of all or any portion of the real property described in Exhibit "B", attached hereto; and (B) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.

(e) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(f) "Declarant" shall mean and refer to Mountaintown Waters, LLC, a Georgia limited liability company, and its successors-in-title and assigns, provided any such successor-in-title or assign 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", attached hereto or in Exhibit "B", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights 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 in Exhibit "B", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one (1) "Declarant" hereunder at any one point in time.

(g) "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded or to be recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

(h) "Majority" means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(i) "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(j) "Mortgagee" shall mean the holder of a Mortgage.

(k) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(l) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

**ARTICLE II**

**PROPERTY SUBJECT TO THIS DECLARATION**

**Section 2.01. Property Hereby Subjected To This Declaration.** The real property which is, by the recording of this Declaration, made subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration, is the real property known as "The Preserve at Mountaintown Creek" and described in Exhibit "A", attached hereto and by reference made a part hereof, being the same property as described in (i) the Final Plat for The Preserve at Mountaintown Creek Phase I located in Land Lots 39, 40, 69, 70, 75 and 76, 11<sup>th</sup> District, 2<sup>nd</sup> Section, (lots 1 through 36), Gilmer County, Georgia as recorded in Plat Book 46, Pages 100 through 104, Gilmer County, Georgia records as well as (ii) the Final Plat for The Preserve at Mountaintown Creek Phase II located in Land Lots 39, 40, 69 and 70, 11<sup>th</sup> District, 2<sup>nd</sup> Section, (lots 39 through 160), Gilmer County, Georgia as recorded in Plat Book 46, Pages 174 through 180, Gilmer County, Georgia records

**Section 2.02 Other Property.** Only the real property described in Section 2.01 is hereby made subject to this Declaration; provided, however, by one or more amendments to this Declaration, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

**ARTICLE III**

**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**Section 3.01. Membership.** Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing 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) vote per Lot. 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 By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast, or office held, for each Lot owned.

**Section 3.02 Voting.** Members shall be entitled to one (1) equal vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

## ARTICLE IV

### ASSESSMENTS

**Section 4.01 Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**Section 4.02 The Lien and Personal Obligation for Assessments.** Each Owner of a Lot, by acceptance of a deed therefore, whether is shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments which may be levied by the Association; (b) special assessments established and collected as hereinafter provided; and (c) specific assessments against any particular Lot and Owner which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. The annual, special, transfer and specific assessments, together with interest thereon and costs of collection, including reasonable attorneys fees actually incurred, shall be a charge and continuing lien upon the Lot against which each such assessment is made. The recording of this amendment shall constitute record notice of the existence of the lien and no further recordation of any claim of lien for such assessments shall be required. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the record Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may due and payable at the time of conveyance without prejudice of the grantee's right to recover from the grantor the amounts paid by the grantee; provided, that if the grantor or grantee shall request a statement from the Association as provided in Section 4.08 of this Article IV, such grantee and his or her successors, successors in title and assigns shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of the amount set forth in the statement.

Annual and special assessments shall be levied equally on all Lots and shall be paid in such a manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration upon ten (10) days written notice of delinquency. Unless otherwise provided by the Board, the annual and special assessments shall be paid in annual installments.

In the event that the holder of first priority Mortgage or second purchase money Mortgage of record or any other Person acquires title to any Lot as the result of foreclosure of any such Mortgage, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the Lot, or any other person acquires title to any Lot as a result of a foreclosure of any such mortgage, such holder or other person and his or her successors, successors in title and assigns shall not be liable for nor shall the Lot be subject to any lien for assessments under the Georgia Property Owners Association Act or under the Declaration on account of any period prior

to the acquisition of title; provided, however, that the unpaid share of the assessment shall be deemed to be a common expense collectible from all of the Lots and Owners thereof, including such holder or other person and his or her successors, successors in title and assigns. A foreclosure shall not relieve the Mortgagee in possession or the purchaser at any foreclosure sale from any liability for any assessments becoming due after such foreclosure. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein. Abandonment of a Lot shall not eliminate the liability of the Lot Owner for assessments. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, the By-Laws or otherwise or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association or from any action taken from by the Association to comply with any law, ordinance or with any order or directive of any municipal or governmental authority. It is hereby acknowledged by each Owner that the obligation to pay assessments is a separate and independent covenant on the part of each Owner.

The Association shall, within five (5) days after receiving a written request therefore and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

**Section 4.03 Computation.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause a copy of the budget and notice of the annual assessment to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved by the Declarant so long as the Declarant then has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof; provided, however, in the event that the Declarant does not then have an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the budget and the assessment shall become effective unless disapproved at a meeting of the Owners by a majority of the Owners. Notwithstanding the foregoing, however, there shall be no obligation to call a meeting to consider the budget except upon petition signed by at least twenty-five (25%) percent of the Owners. In the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

**Section 4.04 Special Assessments.** In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved by the Declarant, so long as the Declarant then has an option to unilaterally annex additional property to this Declaration as provided in Article IX hereof; provided, however, in the



event that the Declarant does not then have an option to unilaterally annex additional property to this Declaration as set forth in Article IX hereof, the Association may levy special assessments from time to time if approved by two-thirds (2/3) of the Owners. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 4.05 Subordination of Lien.** All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs of collection including court costs, expenses required for the protection and preservation of the Lot and reasonable attorneys fees actually incurred, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens recorded against such Lot whatsoever except for: (a) liens for ad valorem taxes on the Lot; (b) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Amendment; or (c) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**Section 4.06 Effect of Nonpayment of Assessment; Remedies of Association.** Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid when due shall also include:

(a) A late or delinquency charge equal to the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment thereof not paid when due;

(b) Interest on each assessment or installment thereof and any delinquency or late charge pertaining thereto at the rate of twelve percent (12%) per annum from the date the same was first due and payable;

(c) All costs of collection, including, but not limited to court costs, expenses required for the protection and preservation of the Lot and reasonable attorneys fees actually incurred, and

(d) The fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure, or until judgment rendered in the action is otherwise satisfied.

If any delinquent assessment or portion thereof is not paid within ten (10) days after written notice is sent to the Lot Owner to make such payment, the entire unpaid

balance of the assessment may be accelerated at the option of the Board and declared due and payable in full, and legal proceedings may be instituted to enforce such lien and personal obligation. Such notice shall be sent by certified mail, return receipt requested to the Lot Owner, both at the address of the Lot and at any other address the Lot Owner may have designated to the Association, in writing, specifying the amount of the assessments then due and payable, together with authorized late charges and interest accrued thereon. The lien for such assessments may be foreclosed by the Association, by suit, judgment or foreclosure in the same manner as other liens for the improvement of real property. The Board of Directors, acting on behalf of the Association, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. The Association shall, in addition to and not in lieu of the foregoing remedy, have the right to bring an action against the Lot Owner to recover all assessments, interest, late fees, costs of collection (including court costs and reasonable attorneys fees actually incurred), fines and other charges for which such Lot Owner is personally obligated pursuant to the terms hereof. The lien for assessments shall lapse and be of no further effect as to assessments or installments thereof, together with late charges and interest applicable thereto, which first became due and payable more than three (3) years prior to the date upon which the notice contemplated in this Section 4.06 is given or more than three (3) years prior to the institution of an action therefore if an action is not instituted within ninety (90) days after the giving of the notice.

**Section 4.07 Date of Commencement of Assessments.** The assessments provided for herein shall commence as to all Lots subject to this Declaration on the first day of the first month after the pool to be constructed as part of the recreational facilities has been completed and the required approvals for its use have been obtained from the appropriate governmental authorities. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year.

**Section 4.08 Assessment Obligation of Declarant.** Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which the assessments against Declarant shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Association with detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

**Section 4.09 Statement from Association.** Any Owner, mortgagee of a Lot, person having executed a contract for the purchase of a Lot, or a lender considering the loan of

funds to be secured by a Lot, shall be entitled upon request to receive a statement from the Association or its management agent setting forth the amount of assessments past due and unpaid together with late charges, interest, attorneys fees and other costs applicable thereto against that Lot. Such request shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association, within five (5) business days from the receipt from such request, to mail or otherwise furnish a statement regarding amounts due and payable at the expiration of such five-day period with respect the Lot involved to such address as may be specified in the written request therefore shall cause the lien for assessments created hereunder to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the Association and upon every Owner. Payment of a \$10.00 fee is required as a prerequisite to the issuance of each such statement, and the payment of the fee shall accompany any such request.

**Section 4.10 Specific Assessments.** The Board shall have the power to levy specific assessments as hereinafter provided. Failure of the Board to exercise its authority under this Section 4.10 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 may specifically assess lots for the following Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association, as provided herein:

(a) Any common expenses benefiting less than all of the Lots shall be specifically assessed equitably among all of the Lots so benefited, as determined by the Board of Directors;

(b) Any common expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots shall be specifically assessed against the Lot or Lots, the conduct of any occupant, licensee or invitee of which occasioned any such common expenses; and

(c) Any common expenses significantly disproportionately benefiting all of the Lots shall be assessed equitably among all of the Lots in the development as determined by the Board of Directors.

A specific assessment assessed hereunder shall be and become a lien against such Lot(s) and the personal obligation of the Owner(s) thereof. A specific assessment may be collected in the same manner as the annual assessment assessed hereunder.

**ARTICLE V**

**MAINTENANCE: CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION**

**Section 5.01 Association's Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall maintain and insure signage located at other street intersections within the Community. The Association shall also maintain landscaping along, all property outside of Lots located within the Community which was originally maintained by Declarant, and water quality of lakes and ponds within the Community.

In addition, the Association shall have the right, but not the obligation, to maintain and insure other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit all owners.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at Owner's sole cost and expense, and all costs thereof shall be added to and become part of a specific assessment to which such Owner is subject and shall become a lien against the Lot.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

**Section 5.02 Owner's Responsibility.** Except as provided in Section 5.01 above, all maintenance of each Lot and all structures, parking areas, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at Owner's sole

cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

**Section 5.03 Conveyance of Common Property by Declarant to Association.** The Declarant may transfer or convey to the Association any personal property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section 5.03.

## ARTICLE VI

### USE RESTRICTIONS AND RULES

**Section 6.01 General.** This Article VI, beginning at Section 6.02 below, sets out certain use restrictions, which must be complied with by all Owners and occupants of Lots. These use restrictions may only be amended in the manner provided in Section 12.04, hereof regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants of Lots until and unless overruled, cancelled, or modified by Declarant so long as the Declarant then has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof; provided, however, in the event that Declarant does not then have an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, such use restrictions and rules shall be binding upon all Owners and occupants of Lots until and unless overruled, cancelled or modified in a regular or special meeting by a Majority of Owners entitled to vote thereon.

**Section 6.02 Residential Use.** All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Lot at any time except with the written approval of the Board. Leasing of a Lot shall not be considered a business or business activity. However, the Board may permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration, By-Laws, or applicable zoning, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities.

**Section 6.03 Signs.** No sign of any kind shall be erected by an Owner or occupant of a Lot within the Community without the prior written consent of the Architectural Control Committee (defined in Section 6.09 below). Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs, and "For Sale" and "For

Rent" signs consistent with the Community-Wide Standard may be erected upon any Lot. The provisions of this Section 6.03 shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

**Section 6.04 Vehicles.** The term "vehicles", as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles. Unless and except to the extent that the occupants of a Lot shall have more vehicles than the number of parking areas serving their Lot, all vehicles shall be parked within such parking areas. Where the Lot contains a garage, "parking areas" shall refer to the number of garage parking spaces. If the Lot includes a garage with exterior doors, such doors shall be kept closed at all times, except during times of ingress and egress from the garage.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. No towed vehicle, boat, recreational vehicle, motor home, or mobile home shall be temporarily kept or stored in the Community for any period in excess of twelve (12) hours unless kept in a garage or other area designated by the Board; vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

**Section 6.05 Occupants Bound.** All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of Lots even though occupants are not specifically mentioned. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner.

**Section 6.06 Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or

maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.

**Section 6.07 Nuisance.** It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

**Section 6.08 Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

**Section 6.09 Architectural Standards.** No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as installed by the Declarant, or as is approved in accordance with this Section 6.09, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an architectural control committee established by the Board (hereinafter the "Architectural Control Committee"). The Board may divide the Architectural Control Committee into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. The Board may employ for the Architectural Control Committee architects, engineers, or other Persons necessary to enable the Committee to perform its review. The Architectural Control Committee may, from time to time delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of

the committee for all matters delegated. Written design guidelines and procedures shall be promulgated for the exercise of this review, which guidelines may provide for a review fee in an amount not less than Twenty-Five (\$25.00) Dollars.

In the event that the Architectural Control Committee fails to approve or disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section 6.09 will be deemed to have been fully complied with. As a condition of approval under this Section 6.09, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Control Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The Architectural Control Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section 6.09, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Control Committee, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Control Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Control Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 6.10 Antennas. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, if such antenna is



visible from any public or private street providing access to or located within the Community. Notwithstanding the above, no satellite dishes shall be placed, allowed, or maintained upon any portion of the Community, including any Lot. Each Owner and occupant of a Lot acknowledges that this provision benefits all Owners and occupants of Lots and each Owner and occupant of a Lot agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

**Section 6.11 Tree Removal.** No trees shall be removed without the express consent of the Board or its designee, except for (a) diseased or dead trees; (b) trees needing to be removed to promote growth of other trees or for safety reasons; and (c) trees within ten (10) feet of the residence, driveway, walkways and septic field constructed or to be constructed on the Lot.

**Section 6.12 Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant of a Lot may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 6.13 Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

**Section 6.14 Clotheslines, Garbage Cans, Woodpiles, Etc.** All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

**Section 6.15 Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

**Section 6.16 Guns.** The discharge of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and small firearms of all types.

**Section 6.17 Fences.** No fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Architectural Control Committee. The

Architectural Control Committee may issue guidelines detailing acceptable fence styles or specifications, but in no event shall a chain link fence be permitted. The foregoing prohibition shall not, however, apply to chain link fences installed by or on behalf of Declarant in connection with Community recreational facilities, if any, constructed by or on behalf of Declarant.

**Section 6.18 Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

**Section 6.19 Air Conditioning Units.** Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed in any structure.

**Section 6.20 Lighting.** Except for seasonal Christmas decorative lights, all exterior lights must be approved by the Architectural Control Committee.

**Section 6.21 Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Control Committee.

**Section 6.22 Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Control Committee.

**Section 6.23 Above Ground Swimming Pools.** Except as may be permitted by the Architectural Control Committee, above ground swimming pools shall not be erected on any Lot.

**Section 6.24 Lake Use.** There is hereby reserved to all Owners, their families and guests, a perpetual easement to use lakes and ponds within the Community for such purposes as are permitted herein. No ice-skating, swimming, or water skiing shall be permitted on any lake or pond. Boating is permitted; provided, however, boats with internal combustion engines shall not be allowed on any lake or pond. Fishing is permitted with such licenses as may be required by any governmental entity. No docks or piers shall be permitted on any lake or pond in the Community without the prior written consent of the Architectural Control Committee. Notwithstanding anything to the contrary contained herein, THE ASSOCIATION SHALL NOT BE RESPONSIBLE FOR ANY LOSS, DAMAGE OR INJURY OCCURRING ON OR ARISING OUT OF THE AUTHORIZED OR UNAUTHORIZED USE OF LAKES, PONDS OR OTHER BODIES OF WATER WITHIN THE COMMUNITY BY ANY PERSON.

## ARTICLE VII

### INSURANCE AND CASUALTY LOSSES

**Section 7.01 Insurance on Common Property.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and such other property, if any, which the Association is obligated to maintain and insure pursuant to Section 5.01 of this Declaration. This insurance shall provide "all risk" coverage, if reasonably available, or if not reasonably available (as determined in the sole discretion of the Board), shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief. In either case, coverage 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 insured hazard.

The Board shall obtain a public liability policy 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, 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 if available, or if not available, the most nearly equivalent coverage.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified in Section 7.01(b), below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Georgia and holding a Best's rating of A or better and a rating of XI or better in the financial size category as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee

having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors 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.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Association's Board of Directors shall be required to make 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 Association's Board of Directors, its manager, 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;

(iii) That no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(vi) That no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

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

In addition to the other insurance required by this Section 7.01, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage, if available, shall be determined

in the directors' best business judgment, but shall at least equal three (3) months assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled, subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association.

**Section 7.02 Damage and Destruction – Insured by Association.**

(a) **In General.** Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors 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; allowing for any changes or improvements necessitated by changes in applicable building codes. The Board of Directors shall have all enforcement powers specified in Article XII, Section 1, of this Declaration necessary to enforce this provision.

(b) **Repair and reconstruction.** Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, the Declarant so long as the Declarant then has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, otherwise agrees; provided, however, in the event that the Declarant does not then have an option to unilaterally subject additional property to this Declaration as provided in Article IX hereof, the damage or destruction of property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty at least three-fourths of all Owners otherwise agree in writing. If, for any reason, either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments 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 to 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 and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition consistent with the Community-Wide standard.

**Section 7.03 Damage and Destruction – Insured by the Owners.** The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in this Declaration.

**Section 7.04 Insurance Deductible.** 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, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damage or destroyed property.

## ARTICLE VIII

### CONDEMNATION

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, unless within sixty (60) days after such taking Declarant, so long as the Declarant then has an option unilaterally to subject property to this Declaration as provided in Article IX hereof, otherwise agrees, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent space is available therefore; provided, however, in the event that Declarant does not then have an option unilaterally to subject property to this Declaration as provided in Article IX hereof, then, in the event of taking by eminent domain of any portion of the Common Property on which improvements have been constructed, unless within sixty (60) days after such taking at least seventy-five percent (75%) of the Owners otherwise agree, the Association shall restore or replace such improvements that were taken on the remaining land included in the Common Property to the extent space is available therefor.

## ARTICLE IX

### ANNEXATION OF ADDITIONAL PROPERTY

**Section 9.01 Unilateral Annexation By Declarant.**

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until seven (7) years after the date hereof annex any portion of the real property described in Exhibit "B", attached hereto and by reference made a part hereof, to the provisions of this Declaration and the jurisdiction of the Association by filing for records in the Office of the Clerk of the Superior Court of the county in which the property to be annexed is located an amendment to this Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such amendment to this Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not be implied or constructed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

**Section 9.02 Other Annexation.** Subject to the consent of the owner thereof and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration as provided in Section 9.01, upon the affirmative vote of a Majority of the Owners present or represented by proxy at a meeting duly called for such purpose, the Association may annex any real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the office of the Clerk of the Superior Court of the county in which the property to be annexed is located a supplementary declaration describing the property being annexed. Any such supplementary declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such supplementary declaration, unless otherwise provided therein.

## ARTICLE X

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

**Section 10.01 Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association ( such request to state the

name and address of such holder, insurer, or guarantor and the Lot 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 Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days.

**Section 10.02 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 Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 10.03 Notice to Association.** Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 10.04 Amendments by Board.** Should 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.

**Section 10.05 Veterans Administration Approval.** As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX, 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 accordance with Article IX, Section 1 hereof 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.

**Section 10.06 Applicability of Article X.** Nothing contained in this Article X 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 X.

**Section 10.07 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.

## ARTICLE XI

### EASEMENTS

**Section 11.01 Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

**Section 11.02 Easements for Use and Enjoyment.**

(a) 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 his Lot, subject to the following provisions:

- (i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;
- (ii) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities in the Community, if any, for any period during which any assessment against his Lot which is hereby provided for remains unpaid; and , for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations;
- (iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and

subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community.); and

- (iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Owners present, or represented by proxy, at a meeting duly called for such purpose and by the Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof.

(b) Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the occupants of such owner's Lot, if leased.

**Section 11.03 Easements for Utilities.** There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

**Section 11.04 Easement for Entry.** In addition to the right of the Board to exercise self-help as provided in Section 12.02, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damaged caused. It is intended that this right of entry shall include (and this right of entry shall include) the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or occupant fails or refuses to cure the condition upon request of the Board.

**Section 11.05 Easement for Entry Features.** There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and street signage for the Community, over and upon each Lot which is located at the corner of a street intersection within the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and signage and the right to grade the land under and around the entry features and signage.

**Section 11.06 Irrigation and Effluent Easements.** There is hereby reserved to the Declarant and the Association a blanket easement: (1) to pump water from ponds, lakes and other bodies of water located within the Community for irrigation purposes; (2) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Property, including within any portion of the recreational amenities, if any.

**Section 11.07 Easement for Maintenance of Water Quality.** There is hereby reserved to the Declarant and the Association a blanket easement over all lakes and ponds within the Community and over that portion of any Lot adjacent to a lake or pond which extends twenty (20) feet from the shoreline and runs parallel to the shoreline, for the purpose of maintaining water quality in such lakes and ponds.

**Section 11.08 Driveway Easement.** There is hereby reserved to the Declarant, the Association and each Lot Owner (a) an easement for vehicular and pedestrian access, ingress and egress over, across and upon, as well as for a driveway across and through Lots 27 through 36 for use by all Lot Owners and for adjacent property owners as well as (b) an easement for maintaining, repairing and replacing said driveway.

**Section 11.09 Pedestrian Easement.** There is hereby reserved to the Declarant, the Association and each Lot Owner an easement for a pedestrian walkway across and through Lots 1 through 36 for use by all Lot Owners.

## ARTICLE XII

### GENERAL PROVISIONS

**Section 12.01 Enforcement.** Each Owner and every occupant of a Lot shall comply strictly with the By-Laws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to his or her Lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-Laws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. Furthermore, the Board of Directors of the Association shall have the right to suspend temporarily voting rights and the right of use of the Common Property and services paid for as a common expense in order to force compliance with the terms and provisions of this Declaration, the By-Laws and the rules and regulations of the Association; provided, however, that no such suspension shall deny any Owner or occupant of Lot access to the Lot owned or occupied. All costs and expenses incurred by the Association, including reasonable attorneys fees, as a result of the action taken to enforce the Declaration, the By-Laws or the rules and regulations of Association shall be deemed part of the assessments due by such Owner of a Lot and shall be collected as provided herein for the collection of assessments.

**Section 12.02 Self-Help.** In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonable necessary, any structure, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, and except in the case of towing of vehicles parked in violation of this Declaration, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

**Section 12.03 Duration.** The provisions of this Declaration shall have perpetual duration and shall forever run with and bind the Community.

**Section 12.04 Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser 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 the Lots subject to this Declaration; or (d) if 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; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of a Majority of the Owners and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof, the consent of Declarant. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written approval so long as the Declarant owns any property in the Community, or subject to annexation to the Community, primarily for development and/or sale.

**Section 12.05 Partition.** The Common Property shall remain undivided, and no Lot Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

**Section 12.06 Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 12.07 Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**Section 12.08 Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**Section 12.09 Preparer.** This Declaration was prepared by Timothy J. Ramsey, Esq., Bodker, Ramsey, Andrews, Winograd & Wildstein, P.C., 3490 Piedmont Road, Suite 1400, Atlanta, Georgia 30305.

**Section 12.10 Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or void able for violation of the rule against perpetuities, then such provisions 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.

**Section 12.11 Indemnification.** The Association shall indemnify every officer and director against any and all expenses, including 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 he or she 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 (except to the extent that such officers or directors may be liable as members 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 insurance is reasonably available.

**Section 12.12 Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and nay amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article IX terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described on Exhibit "A" and Exhibit "B" to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to such reserved easement shall be taken to protect such property, and

damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant owns any property in the Community, or subject to annexation to the Community, primarily for development and/or sale.

Section 12.13 Intentionally Deleted.

Section 12.14 Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the By-Laws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) Notice to be given to the custodian of the records;
- (ii) Hours and days of the week when such an inspection may be made; and
- (iii) Payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

**Section 12.15 Financial Review.** A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, the Owners, by a Majority vote, may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

**Section 12.16 Notice of Sale or Lease.** In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

**Section 12.17 Agreements.** Subject to the prior written approval of Declarant, so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 12.18 Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, 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.

**Section 12.19 Variances.** Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

**Section 12.20 Use of Recreational Facilities By Nonmembers.** For so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX above, Declarant shall have the right to grant to persons who are not members of the Association the right to use the Community recreational facilities constructed by Declarant. The extent and duration of nonmember use and the fee to be charged therefore shall be determined solely by Declarant. The Declarant may grant nonmember use rights to individuals as an easement appurtenant to such individuals' residential real property so that such use rights shall automatically inure to the benefit of both the original grantees and their respective successors-in-title to such real property. For so long as Declarant owns such recreations facilities, nonmember user fees shall be paid to Declarant. If such recreational facilities are conveyed to the Association, nonmember user fees due and payable after the date of such conveyance shall be paid to the Association. Declarant shall determine the amount of nonmember user fees which are due and payable after such conveyance. Such fees shall be paid annually to the Association. The amount of such annual fees may be increased each year by the Board so long as the percentage increase (as compared to the previous year's annual fees) does not exceed the percentage increase in the annual assessment levied against members of the Association (as compared to the previous year's assessment).

Any use right granted to nonmembers which extends beyond the termination of Declarant's option unilaterally to subject additional property to this Declaration shall be valid and may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by Declarant are complied with by the nonmember user.



Declarant hereby expressly reserves unto itself, its successors and assigns, a non-exclusive, perpetual right, privilege and easement with respect to the Community for the benefit of Declarant, its successors, assigns and the above discussed nonmember users, over, under, in and/or on the Community (including, without limitation, the above described recreational facilities), without obligation and without charge the foregoing, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, on or in the Community roads, parking areas and walkways.

Declarant shall not be liable for and is hereby held harmless from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case, the Association's sole remedy shall be to suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. Declarant shall also not be liable for and is hereby held harmless from any personal injury or property damage caused by a nonmember entitled to use the Community recreational facilities constructed by Declarant.

Declarant shall have the sole right to grant use rights to the Community recreational facilities constructed by Declarant to nonmembers and the Board shall have no such right. The provisions of this Section shall apply notwithstanding any contrary provisions in this Declaration, the By-Laws, Articles of Incorporation, rules and regulations, use restrictions and any amendments to any of the foregoing.

### **ARTICLE XIII**

#### **ADOPTION OF GEORGIA PROPERTY OWNERS**

##### **ASSOCIATION ACT**

The Community, all Lots and all Owners and occupants of Lots shall be subject to and governed by the Georgia Property Owners Association Act set forth in Article VI of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, as the same now exists or may be amended from time to time."

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, Declarant and Association have caused this Declaration to be executed by their duly authorized officers on the day and year first above written.

Signed, sealed and delivered in the presence of:

DECLARANT:

MOUNTAINTOWN WATERS, LLC

BY: B, RB SERVICES, LLC  
ITS: MANAGER

By: [Signature]  
George Truett Jarrard, III, Manager

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

My Commission Expires:



(Corporate Seal)

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**

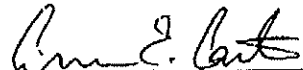
Signed, sealed and delivered in the presence of:

ASSOCIATION:

THE PRESERVE AT MOUNTAINTOWN CREEK PROPERTY OWNERS' ASSOCIATION, INC.

  
Unofficial Witness

By:   
George Truett Jarrard, III, Secretary

  
Notary Public

(Corporate Seal)

My Commission Expires:

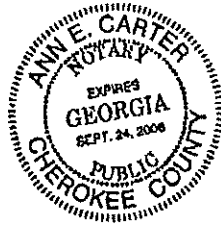


EXHIBIT "A"

LEGAL DESCRIPTION OF THE PRESERVE AT MOUNTAINTOWN CREEK

**Exhibit "A"**

**Legal Description**

**"Tract B"**

All that tract or parcel of land lying and being in Land Lots 39, 40, 69, 75, and 76, 11<sup>th</sup> District, 2<sup>nd</sup> Section of Gilmer County, Georgia, being designated as Tract "B" and consisting of 19.74 acres as shown on Plat of Survey for The Preserve at Mountaintown Creek. Said plat, dated December 20, 2002, by Burns L. Jeffries, GRLS # 2036 is recorded in Plat Book 39, Page 250, Gilmer County Records, with reference made thereto for the purpose of incorporating the same.

**"Tract C"**

All that tract or parcel of land lying and being in Land Lots 39, 40, 69, 75, and 76, 11<sup>th</sup> District, 2<sup>nd</sup> Section of Gilmer County, Georgia, being designated as Tract "C" and consisting of 89.415 acres as shown on Plat of Survey for The Preserve at Mountaintown Creek. Said plat, dated December 20, 2002, by Burns L. Jeffries, GRLS # 2036 is recorded in Plat Book 39, Page 250, Gilmer County Records, with reference made thereto for the purpose of incorporating the same.

**LESS AND EXCEPT**

(1) All that tract or parcel of land lying and being in Land Lots 70 and 75 of the 11<sup>th</sup> District, 2<sup>nd</sup> Section of Gilmer County, Georgia, containing 20.02 acres, as shown on plat of survey for Bonar Wings Enterprises. Said plat, dated October 27, 2003, by Burns L. Jeffries, Georgia Registered Land Surveyor No. 2036, is recorded in Plat Book 41, page 201, Gilmer County Records, with reference made thereto for the purpose of incorporating same.

**"Tract D"**

All that tract or parcel of land lying and being in Land Lots 39, 40, 69, 75, and 76, 11<sup>th</sup> District, 2<sup>nd</sup> Section of Gilmer County, Georgia, being designated as Tract "D" and consisting of 89.415 acres as shown on Plat of Survey for The Preserve at Mountaintown Creek. Said plat, dated December 20, 2002, by Burns L. Jeffries, GRLS # 2036 is recorded in Plat Book 39, Page 250, Gilmer County Records, with reference made thereto for the purpose of incorporating the same.

**"Mullinax Tract"**

All that tract or parcel of land lying and being in Land Lots 70 and 75 in the 11<sup>th</sup> District and 2<sup>nd</sup> Section of Gilmer County, Georgia, consisting of 7.77 acres as shown on plat of survey for James D. Mullinax. Said plat, dated July 19, 2003 by Mark E. Chestain, Georgia Registered Land Surveyor No. 2718, is recorded in Plat Book 35, page 123, Gilmer County Records, with reference made thereto for the purpose of incorporating same, for a more complete metes and bounds description.

Being the same property as described in (i) the Final Plat for The Preserve at Mountaintown Creek Phase I located in Land Lots 39, 40, 69 and 70, 11<sup>th</sup> District, 2<sup>nd</sup> Section, (lots 1 through 36), Gilmer County, Georgia as recorded in Plat Book 46, Pages 100 through 104, Gilmer County, Georgia records as well as (ii) the Final Plat for The Preserve at Mountaintown Creek Phase II located in Land Lots 39, 40, 69, 70, 75 and 76, 11<sup>th</sup> District, 2<sup>nd</sup> Section, (lots 39 through 160), Gilmer County, Georgia as recorded in Plat Book 46, Pages 174 through 180, Gilmer County, Georgia records.

BK:1256 FG:414

EXHIBIT "B"

## **Additional Property, Which May Unilaterally Be Submitted by Declarant**

ALL THAT TRACT OR PARCEL OF LAND contiguous with the Subject Property, including without limitation land lying and being in Land Lots 39, 40, 69, 70, 75 and 76 of the 11<sup>th</sup> District, 2<sup>nd</sup> Section of Gilmer County, Georgia.

EXHIBIT "C"

BY-LAWS  
OF  
THE PRESERVE AT MOUNTAINTOWN  
PROPERTY OWNERS' ASSOCIATION, INC.

**BY-LAWS**  
**OF**  
**THE PRESERVE AT MOUNTAINTOWN**  
**PROPERTY OWNERS' ASSOCIATION, INC.**

**ARTICLE I**

**NAME, MEMBERSHIP, APPLICABILITY, AND DEFINITIONS**

Section 1.01 Name. The name of the Association shall be The Preserve at Mountaintown Property Owners Association, Inc., (hereinafter sometimes referred to as the "Association").

Section 1.02 Membership. The Association shall have one class of membership, as is more fully set forth in that Declaration of Protective Covenants for The Preserve at Mountaintown Creek, (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 1.03 Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

**ARTICLE II**

**ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES**

Section 2.01 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the board of directors of the Association (hereinafter, the "Board" or "Board of Directors"), either in the Community or as convenient thereto as possible and practical.

Section 2.02 First Meeting and Annual Meetings. An annual or special meeting shall be held within one (1) year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur not less than sixty (60) days nor more than one hundred and twenty (120) days before the close of the Association's fiscal year. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday).

Section 2.03 Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by at least twenty-five (25%) percent of the Owners. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at the special meeting, except as stated in that notice.

Section 2.04 Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of record of each Lot a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Lot, he or she shall have designated by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) or more than thirty (30) days before a meeting.

Section 2.05 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 2.06 Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than 5 (five) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 2.07 Voting. The voting rights of the members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein.

Section 2.08 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated and filed with the secretary of the Association (hereinafter, the "Secretary") before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 2.09 Quorum. The presence, in person or by proxy, of twenty-five (25%) percent of the Owners of Lots to which eligible votes appertain shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.



ARTICLE III

BOARD OF DIRECTORS: COMPOSITION AND SELECTION

Section 3.01 Governing Body: Composition. The affairs of the Association shall be governed by a Board of the Directors. Except as provided in Section 3.02, the directors must reside in the Community and shall be members or spouses of such member; provide, however, no Person and his or her spouse may serve on the Board at the same time.

Section 3.02 Directors Appointed by Declarant. Subject to Section 3.05, Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of five (5) years after the date of the recording of the Declaration; or (b) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors and officers selected by the Declarant need not be Owners or residents in the Community. The names of the initial directors selected by the Declarant are set forth in the Articles of Incorporation of the Association.

Section 3.03 Number of Directors. The Board shall consist of not less than three (3) nor more than five (5) members, as provided in Section 3.05. The initial Board of Directors shall consist of three (3) members and such initial members of the Board shall be Jouko J. Rissanen, Robert Mosley and Trey Jarrard.

Section 3.04 Nomination of Directors. Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 3.05 Election and Term of Office. Notwithstanding any other provision contained herein:

(a) Within thirty (30) days after the date on which Persons other than Declarant or a builder holding title solely for purposes of development and resale own one hundred (100) Lots, or whenever the Declarant earlier determines, the "Board of Directors shall call a special meeting at which members other than Declarant shall elect one (1) of the three (3) directors. The remaining two (2) directors shall be appointed by Declarant. The director so elected shall be elected for a term of two (2) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within thirty (30) days after the date on which Persons other than Declarant or a builder holding title solely for purposes of development and resale own one hundred twenty five (125) Lots, or whenever the Declarant earlier determines, the Board of Directors shall be increased to five (5) members and the members other than Declarant shall elect two (2) of the five (5) directors. The remaining three (3) directors shall be appointed by Declarant. The directors so elected shall be elected for a term of two (2) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c), successors shall be elected for like terms.

(c) Within thirty (30) days after the date on which Persons other than Declarant or a builder holding title solely for purposes of development and resale own one hundred fifty eight (158) Lots, or whenever the Declarant earlier determines, the Board of Directors shall call a special meeting at which members other than Declarant shall elect three (3) of the five (5) directors. The remaining two (2) directors shall be appointed by Declarant. The directors so elected shall be elected to serve until the next annual meeting of the Association at which time all directors shall be elected by the Owners as provided in subsection (d) below.

(d) At the first annual meeting after the Owners elect a majority of the directors as provided in subsection (c) above, Owners shall elect all five (5) directors. The term of three (3) directors shall expire two (2) years after such annual meeting, and the term of two (2) directors shall expire one (1) year after such annual meeting. At the expiration of the first term of office of each member of the initial Board of Directors, a successor shall be elected to server for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

At each annual meeting of the membership thereafter, directors shall be elected to succeed those directors whose terms are expiring. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected. Directors may be elected to serve any number of consecutive terms. Cumulative voting shall not be allowed.

Section 3.06 Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by a Majority of the Owners and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than twenty (20) days may be removed by a Majority vote of the Directors at a meeting, a quorum being present. This Section shall not apply to directors appointed by Declarant.

Section 3.07 Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. Each director so selected shall serve the unexpired portion of the term of his predecessor.

## ARTICLE IV

### BOARD OF DIRECTORS; MEETINGS

Section 4.01 Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within then (10) days thereafter at such time and place as shall be fixed by the Board.

Section 4.02 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

Section 4.03 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a Person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph company shall be given at least forty-eight (48) hours before the time set for the meeting.

Section 4.04 Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 4.05 Quorum of Board of Directors. At all meetings of the Board of Directors, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present

shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 4.06 Compensation. No director shall receive any compensation from the Association for acting as such unless approved by the Majority of the Owners; provided, directors shall be entitled to reimbursement for expenses incurred on behalf of the Association if approved by a Majority of the Board of Directors.

Section 4.07 Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

Section 4.08 Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 4.09 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the directors.

## ARTICLE V

### BOARD OF DIRECTORS; POWERS AND DUTIES

Section 5.01 Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;

(b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association.

(f) making and amending use restrictions and rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and

(l) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominiums, or other association. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 5.02 Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days; written notice.

Section 5.03 Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Property and facilities without the approval of the members of the Association; provided, however, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed Ten Thousand (\$10,000.00) Dollars outstanding debt at any time.

Section 5.04 Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fin) unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- (i) the alleged violation;
- (ii) the action required to abate the violation; and
- (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a fine, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property.

(b) Notice. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice, impose a fine. The notice shall state:

- (i) the nature of the alleged violation;
- (ii) that the alleged violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine;
- (iii) that any statements, evidence, and witnesses may be produced by the alleged violator at the hearing; and
- (iv) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(c) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and alleged violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

## ARTICLE IV

### OFFICERS

Section 6.01 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 6.02 Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 6.03 Removal. Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby.

Section 6.04 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code.

Section 6.05 Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 6.06 Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Georgia law.

Section 6.07 Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors.

Section 6.08 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**ARTICLE V**

**COMMITTEES**

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

**ARTICLE VI**

**MISCELLANEOUS**

Section 8.01 Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 8.02 Parliamentary Rules; Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the Person presiding over the proceeding.

Section 8.03 Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 8.04 Amendment. The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment of that instrument shall apply to any amendment to these By-Laws.



AMENDED AND RESTATED DECLARATION OF  
PROTECTIVE COVENANTS

FOR

THE PRESERVE AT MOUNTAINTOWN CREEK

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BK:1256 PG:429

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