

**Restated Declaration of Covenants, Conditions and Restrictions
for The Preserve at Sharp Mountain, Jasper, Georgia**

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Restated
Declaration of Covenants, Conditions and Restrictions
for
The Preserve at Sharp Mountain
Jasper, Georgia

Upon recording please return to:

Joyce Carey
President, POA Board of Directors
325 Black Bear Lane
The Preserve at Sharp Mountain
Jasper, Georgia 30143

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE PRESERVE AT SHARP MOUNTAIN**

WHEREAS, the Four Seasons Properties of Georgia, LLC (“Original Declarant”) recorded that certain Declaration of Covenants, Conditions, and Restrictions for The Preserve at Sharp Mountain in Deed Book 395, Page 213 et seq. of the Pickens County, Georgia land records, as amended (“Declaration”); and

WHEREAS, Article 14, Section 14.2(c) of the Declaration provides that the Declaration may be amended by the affirmative vote, written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class “A” votes in the Association, and, during the Development Period, the written consent of the Declarant; and

WHEREAS, Members holding sixty-seven (67%) percent of the total Class “A” votes in the Association have approved this amended and restated Declaration; and

WHEREAS, the Original Declarant transferred Declarant rights to Naterra Land of Georgia, LLC (“Declarant”); and

WHEREAS, Declarant has involuntarily relinquished control and terminated the Development Period through foreclosure on any and all interest held by the Declarant on property subject or which may be unilaterally submitted to the Declaration; and

WHEREAS, the Development Period has therefore expired and Declarant approval for this amendment is not required; and

WHEREAS, the By-Laws of The Preserve at Sharp Mountain Association, Inc. were recorded as Exhibit “C” to the Declaration; and

WHEREAS, Article 6, Section 6.6(c) of the By-Laws provide that the By-Laws may be amended by the affirmative vote, written consent, or any combination thereof, of Members holding at least sixty-seven (67%) of the total Class “A” votes in the Association, and, during the Development Period, the Declarant; and

WHEREAS, the Development Period has expired; and

WHEREAS, Members holding at least 67% of the total Class “A” votes have approved this amendment to the By-Laws.

NOW, THEREFORE, the original Declaration and all amendments and exhibits thereto, and the original By-Laws and all amendments and exhibits thereto are hereby deleted in their entireties and the following new Declaration and By-laws for the Preserve at Sharp Mountain are simultaneously substituted therefor.

ARTICLE 1: DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.1 “Act” Georgia Property Owners’ Association Act, O.C.G.A. Section 44 3 220, et seq. (Michie 1982), as may be amended.
- 1.2 “Association” or the “POA”: The Preserve at Sharp Mountain Association, Inc., a Georgia nonprofit corporation, its successors and assigns. (equivalences of terms: “*The Preserve at Sharp Mountain Association, Inc.*”, “*Preserve at Sharp Mountain*”, “*Sharp Mountain Preserve*”, “*Preserve*”, “*Property Owners Association*”, “*POA*”, “*Association*”)
- 1.3 “Area of Common Responsibility”: The Common Area, together with any additional areas for which the POA has or assumes responsibility.
- 1.4 “Articles of Incorporation” or “Articles”: The Articles of Incorporation of The Preserve at Sharp Mountain Association, Inc., as filed with the Secretary of State of the State of Georgia, as they may be amended.
- 1.5 “Board of Directors” or “Board”: The body responsible for administration of the POA, selected as provided in the By-Laws and serving as the Board of Directors under Georgia corporate law.
- 1.6 “By-Laws”: The By-Laws of The Preserve at Sharp Mountain POA, Inc., attached as Exhibit “C”, as they may be amended.
- 1.7 “Common Area”: All real and personal property, including easements and licenses, which the POA owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners.
- 1.8 “Common Expenses”: The actual and estimated expenses incurred, or anticipated to be incurred, by the POA for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.
- 1.9 “Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall be determined by the Board of Directors and the Reviewing Body.
- 1.10 “Days”: Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.
- 1.11 “Design Guidelines”: The design, architectural, construction guidelines, and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

- 1.12 “*General Assessment*”: Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.1 and 8.2.
- 1.13 “*Governing Documents*”: The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the rules of the POA, and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.
- 1.14 “*Lot*”: A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Lot until such time as a subdivision plat is filed with respect to all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this Section.
- 1.15 “*Majority*”: Those votes, Owners, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.
- 1.16 “*Member*”: A Person subject to membership in the POA pursuant to Section 4.1.
- 1.17 “*Mortgage*”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.
- 1.18 “*Mortgagee*”: A beneficiary or holder of a Mortgage.
- 1.19 “*Owner*”: One (1) or more Persons who hold the record title to any Lot, including the POA, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.
- 1.20 “*Person*”: A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.
- 1.21 “*Properties*”: The real property described on Exhibit “A” as such exhibit may be amended or supplemented from time to time to reflect any additions in accordance with Article 2. The Properties are a residential property owners’ development which hereby submits to the Georgia Property Owners’ Association Act, O.C.G.A. Section 44 3 220, et seq. (Michie 1982), as may be amended.
- 1.22 “*Public Records*”: The Official Records of the Clerk of the Superior Court of Pickens County, Georgia.

- 1.23 “*Reviewing Body*”: The POA, the Board of Directors, or a committee formed by either of the foregoing, having the rights and responsibilities for administration of the Design Guidelines and review of all applications for constructions and modifications pursuant to Article 9.
- 1.24 “*Special Assessment*”: Assessments levied in accordance with Section 8.3.
- 1.25 “*Specific Assessment*”: Assessments levied in accordance with Section 8.4.
- 1.26 “*Supplemental Declaration*”: An instrument filed in the Public Records which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

ARTICLE 2: SUBMITTED PROPERTY AND ADDITIONAL PROPERTY

2.1 *Submitted Property.*

The real property as being more particularly described in Exhibit “A” attached to this Declaration, and incorporated herein by this reference is subjected to this Declaration.

2.2 *Annexation of Additional Property.*

The POA may annex any real property to the provisions of this Declaration with the consent of the owner of such property, and a 67% affirmative vote of Members of the POA. Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the POA, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

ARTICLE 3: PROPERTY RIGHTS

3.1 *Common Area.*

Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the POA;
- (c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the POA to rent, lease or reserve any portion of the Common Area to any Owner for the exclusive use of such Owner and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;
- (e) The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area;
- (f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;

- (g) The right of the Board to permit use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;
- (h) The right of the POA, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot; provided however, the Owner shall remain responsible for payment of all assessments and other charges.

3.2 *Private Streets.*

Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads owned by the POA within the Properties (“Private Streets”), whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Lot, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) The right of the POA, so long as the POA owns the Private Streets, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets;
- (c) The right of the POA to dedicate all or any part of Private Streets; provided, however, that the right of the POA to dedicate Private Streets shall not obligate the POA to do so, nor shall it constitute a promise, either express or implied, to dedicate the Private Streets at some future time;
- (d) The rights of the POA to maintain the Private Streets.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable.

3.3 *No Partition.*

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

3.4 *Condemnation.*

The POA shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Common Area shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area

under threat of condemnation only if approved by Members holding at least sixty-seven percent (67%) of the total votes in the POA and the written consent of the POA. The award made for such taking or proceeds of such conveyance shall be payable to the POA.

ARTICLE 4: MEMBERSHIP

4.1 *Membership.*

The Association shall have one class of membership. Every Owner shall be a Member of the POA. This does not include persons who hold an interest merely as security for the performance of an obligation. The giving of a security interest shall not terminate an Owner's membership. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in the By-Laws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the Secretary of the POA.

ARTICLE 5: RIGHTS AND OBLIGATIONS OF THE POA

5.1 *Function of POA.*

The POA shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The POA shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The POA shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The POA shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.

5.2 *Personal Property and Real Property for Common Use.*

The POA may acquire, hold, and dispose of tangible and intangible personal property and real property.

5.3 *Enforcement.*

All Owners, occupants and their guests shall comply with the Declaration, By-Laws and all rules and regulations promulgated by the Board. The POA, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Declaration, By-Laws and/or rules and regulations directly against all violators. However, if an Owner's family member, guest or occupant violates the Declaration, By-Laws, or rules and regulations, the POA, in its sole discretion, is permitted to enforce the terms of the Declaration, By-Laws or rules and regulations against: (1) only the Owner; (2) only the violating family member, guest or occupant; or (3) both the Owner and the violating family member, guest or occupant. Notwithstanding anything herein to the contrary, the Owner of the Lot is always ultimately responsible for his or her own actions and the actions of all family members, occupants and guests of such Lot.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or occupant to proceed independently for relief from interference with his or her personal or property rights against a Person violating the Declaration, By-Laws or rules and regulations. The Board of Directors may, in its discretion, require the aggrieved Owner or occupant to independently pursue all available remedies under Georgia law against the violator before the POA intervenes and commences enforcement action against such violator.

(a) *Types of Enforcement Actions.* In the event of a violation of the Declaration, By-Laws or the rules and regulations, the POA shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the POA or the Board to deny ingress and egress to or from a Lot:

- (i) Suspend all violators' rights to use the Common Area;
- (ii) Suspend the voting rights of a violating Owner;
- (iii) Impose reasonable fines against all violators, which shall constitute a lien on the violating Owner's Lot;
- (iv) Use self-help to remedy the violation;
- (v) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the violator to cease and/or correct the violation; and
- (vi) Record in the Pickens County land records a notice of violation identifying any uncured violation of the Declaration, By-Laws, or rules and regulations regarding the Lot.

(b) *Suspension and Fining Procedure.* Except as provided below, before imposing fines or suspending right to use the Common Area or the right to vote, the POA shall give a written violation notice to the violator as provided below.

- (i) *Violation Notice.* The written violation notice to the violator shall:
 - (a) Identify the violation, suspension(s) and/or fine(s) being imposed; and
 - (b) Advise the violator of the right to request a violation hearing before the Covenants Committee to contest the violation or request reconsideration suspension(s) or the fine(s). Notwithstanding the violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later or earlier date is specified in such notice.

(ii) *Violation Hearing.* If the violator submits a written request for a violation hearing within 15 days of the date of the violation notice described above, then the Covenants Committee shall schedule and hold, in executive session, a violation hearing. If a violator fails to request a violation hearing within the 15-day period, such violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a violator requests a violation hearing within the 15-day period, the violator shall have a reasonable opportunity to address the Covenants Committee regarding the violation; provided, however, the Committee may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of

time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

(iii) *Appeal*. If a hearing is held before a Covenants Committee, the violator shall have the right to appeal the Covenants Committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the President or Secretary of the POA within fifteen (10) Days after the hearing date.

(iv) *No Violation Notice and Hearing Required*. No violation notice or violation hearing shall be required to:

- (1) impose late charges on delinquent assessments;
- (2) suspend a violating Owner's voting rights if the violator's Lot is shown on the POA's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
- (3) suspend a violator's right to use the Common Area if the violator's Lot is shown on the POA's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violator's right to use the Common Area shall be automatic (which shall allow the POA to tow and/or boot a violator's vehicle located on the Common Area without complying with the Suspension and Fining Procedures described above);
- (4) Engage in self-help in an emergency;
- (5) Impose fines (per the "Schedule of Fines" established by the Board) for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the violator; or
- (6) impose fines if the same violation occurs again on the same Lot, in which case fine(s) may be imposed on a per diem basis without any further notice to the violator.

(c) *Self-Help*. In addition to all other enforcement rights granted herein, the Board of Directors may elect to enforce any provision of the Declaration, By-Laws and rules and regulations of the POA by self help without the necessity for compliance with the Suspension and Fining Procedures described above.

By way of example and not limitation, the POA or its duly authorized agent shall have the authority to tow vehicles that are in violation of parking regulations and enter a Lot or any portion of the Common Area to abate or remove any structure, thing or condition that violates the Declaration, By-Laws or rules and regulations of the POA. Unless an emergency exists, before exercising self-help, the POA shall give the violator at least two days prior written notice. Such notice shall request that the violator remove and abate the violation and restore the Lot to substantially the same condition that existed prior to the structure, thing or condition being placed on the Lot and causing the violation. Such removal, abatement and restoration shall be accomplished at the violator's sole cost and expense. If the same violation occurs again on the same Lot, the POA may exercise self-help without any further notice to the violator.

(d) *Injunctions and Other Suits at Law or in Equity.* All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Declaration, By-Laws, or rules and regulations of the POA. Therefore, in addition to all other enforcement rights granted herein, the POA is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a violator to cease and desist and/or correct any violation.

(e) *Costs and Attorney's Fees for Enforcement Actions.* In any action taken by the POA to enforce the Declaration, By-Laws or rules and regulations of the POA, the Association shall be entitled to recover from the violator, any and all costs incurred by the POA, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Lot.

(f) *Failure to Enforce.* The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each violator. The failure of the Board to enforce any provision of the Declaration, By-Laws, or rules and regulations of the POA shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the POA for failure to enforce if the Board of Directors determines that:

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

5.4 *Implied Rights; Board Authority.*

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

5.5 *Indemnification.*

The POA shall indemnify every officer, director, and committee member against all damages, liabilities, and expenses, including reasonable attorneys fees, incurred 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, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Georgia law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfea-

sance, misconduct, or bad faith. The officers, directors, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the POA (except to the extent that such officers, directors, or committee members may also be Members of the POA). The POA shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The POA shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

5.6 *Dedication of or Grant of Easements on Common Area.*

The POA may dedicate or grant easements across portions of the Common Area to Pickens County, Georgia, or to any other local, state, or federal governmental or quasi-governmental entity.

5.7 *Security.*

Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The POA may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the POA, nor any successor POA shall in any way be considered insurers or guarantors of security within the Properties, including the Common Area. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the POA, its Board of Directors and committees, and any successor POA are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Lots, dwellings and the contents of dwellings, resulting from acts of third parties or acts of God, including without limitation, fires.

ARTICLE 6: MAINTENANCE

6.1 *POA's Responsibility.*

(a) The POA shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all Common Area;

(ii) all landscaping and other flora, parks, lakes, ponds, scenic overlooks, structures, and improvements, including any entry features, gazebos, private streets, parking areas, and bike and pedestrian pathways/trails, situated upon the Common Area;

(iii) base, paving, shoulders and slopes of any POA-owned roadways within the Properties to the extent deemed necessary in the discretion of the Board;

(iv) all furnishings, equipment and other personal property of the POA;

(v) any landscaping and other flora, parks, bike and pedestrian pathways/trails, buffers, entry features, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;

(vi) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the POA;

(vii) all pipes, headwalls, storm drainage structures, manholes, ponds, lakes, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith.

The POA may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The POA shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of votes in the POA agree in writing to discontinue such operation.

(c) The POA may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner, or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the POA may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the POA to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. Notwithstanding the foregoing, the Board may, within its sole discretion, allocate the expense of maintenance, repair, and replacement which benefits one (1) or more, but less than all Lots, as a Specific Assessment in accordance with the benefit so received by such Lots, pursuant to Section 8.4.

6.2 *Owner's Responsibility.*

Each Owner shall maintain his or her Lot, and all structures, parking areas, sprinkler and irrigation systems, mailbox, driveway, landscaping and other flora, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the POA. Maintenance of property includes the removal of trees, tree limbs, logs, rocks, or other natural materials that may encroach on common areas or roads. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the POA may perform such maintenance responsibilities and assess all costs incurred by the POA against the Lot and the Owner in accordance with Section 8.4.

The POA shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

6.3 *Standard of Performance.*

Responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and the Declaration, By-Laws, and rules and regulations of the POA. Neither the POA nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE 7: INSURANCE AND CASUALTY LOSSES

7.1 *POA Insurance.*

(a) *Required Coverages.* The POA, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

- (i) Blanket property insurance on any Area of Common Responsibility;
- (ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the POA and its Members;
- (iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;
- (iv) Directors and officers liability coverage;
- (v) Fidelity insurance covering all Persons responsible for handling POA funds.
- (vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, fire, earthquake, or flood insurance.
- (vii) In the event of an insured loss, the deductible shall be treated as a Common Expense and assessed against all Lots. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.4.

(b) *Policy Requirements.* The POA shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Pickens County, Georgia area.

All POA policies shall provide for a certificate of insurance to be furnished to the POA and to each Member upon request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

- (i) All insurance coverage obtained by the Board shall:
 - (1) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
 - (2) be written in the name of the POA as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the POA and its Members;
 - (3) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
 - (4) contain an inflation guard endorsement;
 - (5) include an agreed amount endorsement, if the policy contains a co-insurance clause; and
 - (6) an endorsement requiring at least thirty (30) Days prior written notice to the POA of any cancellation, substantial modification, or non-renewal.

- (ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:
 - (1) a waiver of subrogation as to any claims against the POA's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
 - (2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
 - (3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the POA to cure the defect or violation and allowance of a reasonable time to cure;
 - (4) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
 - (5) a cross liability provision; and
 - (6) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) *Damage and Destruction.* In the event of any insured loss, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least sixty-seven percent (67%) of the Members vote not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared and maintained by the POA consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall.

7.2 *Owners' Insurance.*

By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the POA to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE 8: ASSESSMENTS

8.1 *Creation of Assessments.*

There are hereby created assessments for POA expenses as the Board may specifically authorize from time to time. There shall be four (4) types of assessments: (a) *General Assessments* as described in Section 8.2; (b) *Special Assessments* as described in Section 8.3; (c) *Specific Assessments* as described in Section 8.4; and (d) *Capital Reserve Assessments* as described in Section 8.9. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorney fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section

8.5. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorney fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot through foreclosure shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any assessment or charge, or any part or installment thereof, is not paid in full within 15 days of the due date, or such later date as may be provided by the Board of Directors:

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

Owners may not exempt themselves from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the POA or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The POA is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with other entities for payment of Common Expenses.

8.2 *Computation of General Assessments.*

At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund.

General Assessments shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the POA equal to the total budgeted Common Expenses, including any reserves. In determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the POA, including any surplus from prior years, and any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall post a copy of the budget and notice of the amount of the General Assessment for the following year at the official POA web site to notify Owners at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the eligible votes in the POA. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

Notwithstanding anything to the contrary herein, any change in General Assessment cannot exceed 10% over the immediate previous General Assessment without approval of 67% of the eligible Owners. An increase in POA fees must be announced 60 days prior to the end of the fiscal year.

8.3 *Special Assessments.*

In addition to other authorized assessments, the POA may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be allocated equally among all Lots. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the eligible votes. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided

for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.4 *Specific Assessments.*

The POA shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and
- (b) to cover costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.
- (c) pursuant to Section 44-3-225(a) of the Act as, in its discretion, the Board shall deem appropriate.

In addition, fines levied by the POA pursuant to Section 4.3 shall constitute Specific Assessments.

Failure of the Board to impose a Specific Special Assessment shall not be grounds for any action against the POA or the Board and shall not constitute a waiver of the Board's right to do so in the future.

8.5 *Lien for Assessments.*

All assessments and charges levied against a Lot and its Owner, together with interest, costs and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs and expenses), and rents (if the Board of Directors so elects), in the maximum amounts permitted under the Act, shall be: (1) a charge and a continuing lien against such Lot; and (2) the personal obligation of the Person who is the Owner of the Lot on the due date of the assessment. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance of the Lot. The Association, in the Board's discretion, may record a notice of such lien in the Pickens County, Georgia land records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority as provided in the Act. Such lien may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

The POA may bid for the Lot at the foreclosure sale so long as it has the capital to pay for the Lot in advance, and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the POA following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Lot owned by the

POA. The POA may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.6, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded 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.

8.6 *Date of Commencement of Assessments.*

The obligation to pay assessments shall commence as to each Lot on the date which the Lot is conveyed to a Person. The first annual General Assessment, if any, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

8.7 *Failure to Assess.*

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

8.8 *Exempt Property.*

The following property shall be exempt from payment of assessments:

- (a) All Common Area and such portions of the property owned by the POA as are included in the Area of Common Responsibility pursuant to Section 5.1; and
- (b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility.

8.9 *Capital Reserve Assessment.*

Upon acquisition of record title to a Lot by the first Owner and upon resale of such Lot by each successor purchaser, a Capital Reserve Assessment shall be paid by or on behalf of the purchaser to the POA in an amount to be established by the Board from time to time. The Capital Reserve Assessment shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. The Capital Reserve Assessment shall be collected and disbursed to the POA at closing of the purchase and sale of each Lot.

8.10 *Statement of Account.*

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

ARTICLE 9: ARCHITECTURAL STANDARDS

9.1 *General.*

No exterior structure or improvement, as described in Section 9.4, shall be placed, erected, installed or made upon any Lot or adjacent to any Lot where the purpose of the structure is to service such Lot except in compliance with this Article, and with the prior written approval of the Reviewing Body, unless exempted from the application and approval requirements pursuant to Section 9.3.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer, unless otherwise approved by the Reviewing Body in its sole discretion.

This Article shall not apply to the activities of the POA, nor to improvements to the Common Area by or on behalf of the POA.

9.2 *Architectural Review.*

Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties acknowledges that the POA, or its designated representatives, shall be the Reviewing Body and that responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be the sole responsibility and right of the POA.

The Board, may, but shall not be obligated to, delegate all or any portion of its rights and responsibilities hereunder to a committee appointed by the Board. Such committee, if formed, may be comprised of Members of the POA and/or architects, landscape architects, engineers and similar professionals, whose compensation, if any, shall be established from time to time by the entity forming the committee. Any such delegation shall be in writing, shall specify the scope of the responsibilities delegated, and shall be revocable at any time. The entity forming the committee shall have the right to veto any action or decision taken by the committee which is inconsistent with the Governing Documents or is deemed inappropriate or inadvisable for any reason.

9.3 *Guidelines and Procedures.*

(a) *Design Guidelines.* The POA may prepare Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewing Body in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Body and compliance with the Design Guidelines does not guarantee approval of any application.

The Reviewing Body may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals.

The Reviewing Body at the direction of the Board shall have full authority to amend the Design Guidelines. Any amendments to the Design Guidelines shall be prospective only. There shall be no limitation on the scope of amendments to the Design Guidelines except that no amendment shall require the modification or removal of any structure previously approved once the approved construction or modification has commenced. The Reviewing Body is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Reviewing Body shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Properties.

Any committee formed by the Reviewing Body may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the Reviewing Body. Any architectural guidelines and standards adopted by a committee may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

(b) *Procedures.* Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the Reviewing Body for review and approval (or disapproval).

Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. Decisions that are based on aesthetics alone, and not best building practices, safety, or other quantifiable measure, shall be able to be appealed to an appeals committee of four (4) Owners: two (2) selected by the Board and two (2) selected by the appealing Owner (not to be comprised of any Reviewing Body member, Board member, or the appealing Owner himself). The President of the POA Board will be the fifth tie-breaking member of this appeals committee.

In the event that the Reviewing Body fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with this Declaration or the Design Guidelines unless a variance has been granted in writing by the Reviewing Body pursuant to Section 9.7.

Notwithstanding the above, the Reviewing Body by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

9.4 *Specific Guidelines and Restrictions.*

(a) *Exterior Structures and Improvements.* Exterior structures and improvements shall include, but shall not be limited to, clearing; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; clotheslines; garbage cans; swimming pools; gazebos or playhouses; window air-conditioning units or fans; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; roadways, streets, driveways; walls, dog runs, animal pens, or fences of any kind; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the POA shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the Reviewing Body shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the Reviewing Body. The Reviewing Body may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

(i) *Signs.* No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the Reviewing Body, except (1) such signs as may be required by legal proceedings; (2) not more than one (1) professional security sign of such size deemed reasonable by the Reviewing Body in its sole discretion; and (3) not more than one (1) professionally lettered “for sale” sign, which is rectangular or square in shape and does not exceed four (4) square feet in size and which is expressly limited and restricted to indicating, referencing or containing the words “for sale” along with identifying the telephone number of the owner or the name and telephone number of the agent/broker sign. No “for rent” signs shall be permitted within the Properties.

Unless in compliance with this Section, no signs shall be posted or erected by any Owner or occupant within any portion of the Properties, including the Common Area, any Lot, any structure or dwelling located on the Common Area or any Lot (if such sign would be visible from the exterior of such structure or dwelling as determined in the Reviewing Body’s sole discretion). All permitted signs must be professionally

prepared. The Reviewing Body reserves the right to further restrict the size, content, color, lettering, design and placement of any approved signs. This provision shall not apply to entry, directional, or other signs installed by the POA or its duly authorized agent as may be necessary or convenient.

(ii) *Tree Removal*. New Construction– Trees may be cleared as necessary to accommodate placement of new construction projects after a County Building Permit and State Septic Permit is obtained.

Existing homes with Certificate of Occupancy– No trees that are six (6) inches or more in diameter at a point four (4) feet above the ground shall be removed without the prior written consent of the Reviewing Body; provided however, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a septic field, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the Reviewing Body. The Reviewing Body may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed.

(iii) *Lighting*. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) decorative post lights; (3) pathway lighting; (4) street lights in conformity with any established street lighting program for the Properties; (5) seasonal decorative lights during the usual and common season; or (6) any additional lighting as may be approved by the Reviewing Body.

(iv) *Temporary or Detached Structures*. Except as may be permitted by the Reviewing Body during initial construction, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Lot. Except as provided in Section 10.7, no mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Lot as a temporary or permanent dwelling.

(v) *Accessory Structures*. With the approval of the Reviewing Body, detached accessory structures may be placed on a Lot to be used for a playhouse, swimming pool, tennis court, tool shed, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Lot. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the Reviewing Body, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot or in a location approved by the Reviewing Body. All accessory structures shall be located within side and rear setback lines as may be required by the Reviewing Body or by applicable zoning law.

(vi) *Utility Lines*. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction.

(vii) *Standard Mailboxes.* The Reviewing Body reserves the right to approve the style, design, color and location prior to any original installation or replacement of any mailbox within the common areas. Application shall be made to the Reviewing Body prior to installation or replacement. By accepting a deed to a Lot, each Owner agrees that the Reviewing Body may remove any non-approved mailbox in a reasonable manner; all costs for same shall be paid by Owner of such Lot, and all claims for damages caused by the Reviewing Body are waived.

9.5 *Construction Period.*

After commencement of construction, each Owner shall diligently continue construction to complete such construction in a timely manner. For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the Reviewing Body; (b) a building permit has been issued for the Lot by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the dwelling upon the Lot.

9.6 *No Waiver of Future Approvals.*

Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.7 *Variance.*

The Reviewing Body may authorize variances from compliance with any of its guidelines and procedures either before or after commencement of the improvement(s) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewing Body from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.8 *Limitation of Liability.*

The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the POA, the Board, nor the Reviewing Body shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the POA, the Board, nor the Reviewing Body or any committee, or member of any

of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, any architectural review committee and its members shall be defended and indemnified by the POA as provided in Section 5.5.

9.9 *Enforcement.*

The POA, any member of the Board or the Reviewing Body or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Reviewing Body, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the property as requested by the Reviewing Body, then the POA, the Board or the Reviewing Body shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Reviewing Body by any means of enforcement described in Section 5.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a Specific Assessment.

Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the POA shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

Neither the POA, nor its members, officers nor directors shall be held liable to any person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the Reviewing Body from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the POA shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewing Body.

ARTICLE 10: USE RESTRICTIONS**10.1 *General.***

This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Lot. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, POA business offices, or related parking facilities) consistent with this Declaration and any Supplemental Declaration.

10.2 *Rules and Regulations.*

In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding 67% of the eligible votes in the POA.

10.3 *Occupants Bound.*

All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

10.4 *Leasing.*

Lots may only be leased for residential purposes. All leases must be for an initial term of no less than 12 months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the POA. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board.

10.5 *Residential Use.*

Lots may be used only for residential purposes of a single family and for ancillary business or home office uses. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Lot without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and

for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this Section.

10.6 *Occupancy of Unfinished Dwellings.*

No dwelling erected upon any Lot shall be occupied in any manner during the course of construction, nor at any time prior to obtaining a Certificate of Occupancy from the County.

10.7 *Vehicles.*

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways serving the Lots unless otherwise approved by the Reviewing Body; provided however, the POA may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles authorized by the Board.

(b) Recreational vehicles shall be parked only in the garages or other enclosed areas within a Lot or, with the prior written approval of the Reviewing Body, other hard-surfaced areas which are not visible from the street; provided however, guests of an Owner or occupant may park a recreational vehicle on the driveway serving such Owner's or occupant's Lot for a period not to exceed seven (7) Days each calendar year. "Visibility" shall be determined by the Reviewing Body in its sole discretion. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, mini bikes, scooters, go-carts, golf carts, campers and camper trucks, buses, commercial trucks and commercial vans. Any recreational vehicle parked or stored in violation of this provision in excess of seven (7) Days shall be considered a nuisance and may be removed from the Properties. The POA may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

(d) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt.

10.8 *Private Streets owned by the POA.*

The Private Streets shall be subject to the provision of this Declaration regarding use of Common Area. Additionally, Owners of Lots and other permitted users of the Private Streets

pursuant to Section 3.2 shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the Private Streets by other authorized users of the Private Streets. Prohibited activities shall include without limitation obstruction of any of the Private Streets. There shall be no parking of vehicles, as such term is defined in Section 10.7, upon the Private Streets for periods longer than one (1) hour, except when the Owners are having parties, meetings, or such events approved by the Board of Directors.

10.9 *Use of Common Area.*

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

With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The POA shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the POA, its agents or employees.

10.10 *Animals and Pets.*

Dogs, cats, other usual and common household pets shall be permitted upon Lots in reasonable number, as determined by the Board. Horses shall be permitted; however, no Lot shall be permitted to contain more than one (1) horse per three (3) acres of land, unless otherwise prohibited by any applicable zoning ordinance, zoning condition, or other law. No other animals, livestock, agricultural animals or poultry shall be permitted within the Properties, and no animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All animals shall be kept free from infectious, contagious, or transmissible diseases. All animals shall be reasonably controlled by the owner whenever outside a dwelling and shall be kept in such a manner as to not become a nuisance by barking or making other noises, destroying property or other acts. The owners of any animal shall be responsible for all of the animal's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 5.3.

10.11 *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. The POA has the right to remedy such conditions at the owner's expense. No property within the Properties shall be used, in whole or in part, for the storage of anything 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 Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort which activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. 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 or as approved by the Reviewing Body, shall be located, installed or maintained upon the exterior of any dwelling unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically.

10.12 *Storage of Materials, Garbage, Dumping, etc.*

All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of rocks, stones, grass clippings, leaves or other debris; rubbish, trash or garbage; sewage or waste water; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake within the Properties, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff.

Each Owner shall maintain his or her Lot in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash and debris to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Lot shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Lots and shall not be buried or covered on the Lot. Any Lot on which construction is in progress may be policed prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Lot upon reasonable notice by POA in preparation for special events.

10.13 *Combustible Liquid.*

There shall be no storage of gasoline, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the Reviewing Body. Storage of propane and propane tanks shall be permitted; however, propane tanks shall be buried or otherwise not visible from adjacent Lots or Common Areas except as may be approved in writing by the Reviewing Body. The POA shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.14 *Guns.*

The discharge of firearms on the Properties is prohibited except in cases where the personal safety of an individual is at risk, or in lawful defense of personal property. The Board, the Association, its officers, directors, and agents shall have no obligation to exercise self-help to prevent or stop any such discharge.

10.15 *Subdivision or Combining of Lots.*

No Lot shall be subdivided or adjacent Lots combined or boundary lines changed after a plat including such Lot/Lots has been approved and filed in the Public Records and such subdivision or combination has been approved by the prior written consent of the Reviewing Body and the POA. In addition, no home shall be subdivided or partitioned to create housing for more than a single family. The POA, however, hereby expressly reserves the right to replat any Lot or Lots which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.16 *Use of Lot for Access For Outside Development.*

No Lot shall be used to develop a right-of-way or to create an access road or easement for ingress and egress to any development outside of the Preserve at Sharp Mountain community, except to the extent that such access for ingress and egress is required by law.

10.17 *Sight Distance at Intersections.*

All property located at street intersections or driveways shall be landscaped and improved so as to permit safe sight across such areas. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

10.18 *Drainage and Grading.*

(a) Catch basins and drainage areas are for the purpose of natural flow of water only.

No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on his or her Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from his or her Lot. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from his or her Lot. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Lots. The POA does not bear any responsibility for remedial actions to any Lot.

(d) No Person shall alter the grading of any Lot without prior approval pursuant to Article 9 of this Declaration. The POA hereby reserves for itself a perpetual easement

across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

(e) All Persons shall comply with any and all applicable state and/or county erosion control ordinances in construction of improvements on any Lot and shall not take any action that would create erosion or siltation within the Properties without prior written approval in accordance with Article 9.

10.19 *Irrigation.*

Owners shall not install irrigation systems which draw upon surface waters nor from any lakes, ponds or streams within the Properties. However, the POA shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

10.20 *Streams.*

No streams which run across any Lot may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board or without all applicable county, state, federal and U.S. Army Corps of Engineers permits, except that the POA shall have such rights as provided in Article 11.

10.21 *Lakes and Other Water Bodies.*

Any lakes, ponds, and streams within the Properties shall be used only in accordance with such rules and regulations as may be adopted and published by the Board. Swimming, boating, fishing, and other active uses of lakes or other bodies of water within the Properties shall be prohibited. The POA shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes or other water bodies within the Properties. In addition, the POA shall not be responsible for maintaining, increasing or decreasing the water level within any lake or other water body or removing vegetation from any lake or other water body.

No Owner shall take any action or fail to take any action which would detrimentally affect the condition or the use and enjoyment of any lake, pond or stream by the other Owners. Owners shall be obligated to refrain from any actions which would erode or damage the shoreline of any lake, pond or stream, pollute any lake, pond or stream, add chemicals or detergent to any lake, pond or stream, or deposit debris, trash, rocks, stones, sewage or waste water in any lake, pond or stream.

10.22 *Fireworks.*

Initiating or launching self-propelled fireworks that are capable of transporting or projecting incendiary materials are expressly prohibited within the properties. For the purposes of this provision, "fireworks" shall include free-standing, ground-launched, water-launched, hand-launched, projector-launched (e.g., sling shot), vehicle-launched, or gun-launched pyrotechnics. Owners proven to be in violation of this paragraph will be held responsible via a combination of Association fines and State prosecution to the extent possible under the law.

ARTICLE 11: EASEMENTS

The POA reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the POA, the Members, and the Owners, and their successors-in-title.

11.1 Easements of Encroachment.

The POA reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots and between each Lot and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Easements for Utilities, etc.

(a) The POA reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for the POA, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

The POA may assign to the local water supplier, sewer service provider, electric company, telephone company, and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Any damage to a Lot resulting from the exercise of the easements described in subsection (a) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(c) The POA reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3 *Easements to Serve Additional Property.*

The POA reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. The POA agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.4 *Easement for Entry.*

The POA reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the POA to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the POA's officers, committee members, agents, employees and managers of the POA, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.5 *Easements for Maintenance and Enforcement.*

The POA reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the POA to enter all portions of the Properties, including each Lot, to (a) perform its maintenance responsibilities under Article 6, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the POA at its expense. Entry under this Section shall not constitute a trespass.

The POA also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys fees, may be assessed against the violator as a Specific Assessment.

11.6 *Easements for Lake and Pond Maintenance and Flood Water.*

The POA reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees and the POA the nonexclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) draw water from such sources for purposes of irrigation; (c) construct, maintain, and repair any bulkhead, wall, or other structure retaining water; and (d) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The POA, and its designees shall have an access easement over and across any of the Properties abutting or containing any portion of any lake, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

The POA further reserves, creates, establishes, promulgates and declares for itself and its successors, assigns and designees, and the POA the non-exclusive, perpetual, appurtenant right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within twenty (20) feet of lake beds, ponds, streams and wetlands in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; (d) disturb existing landscaping; and (e) pile dirt and plant materials. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. All affected areas shall be restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of any construction or maintenance activities authorized in this Declaration. Nothing herein shall be construed to make the POA or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

The POA reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (a) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (b) to define the limits of any such easements.

11.7 *Easement for Walking Trail Access.*

The POA hereby grants to the Owners a perpetual, non-exclusive easement over and across any areas designated as “walking trails” or “paths” on any recorded subdivision plat of the Properties. Use of such walking trails or paths shall be governed by reasonable rules and regulations promulgated by the POA.

11.8 *Lateral Support.*

The POA reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Lot, and

any improvement which contributes to the lateral support of another portion of the Common Area or of another Lot shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.9 *Easement for Special Events.*

The POA reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as the POA, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.10 *Liability for Use of Easements.*

No Owner shall have a claim or cause of action against the POA, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

ARTICLE 12: MORTGAGEE PROVISIONS

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

12.1 *Notices of Action.*

An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the POA (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby 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 Properties 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 a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or Occupant which is not cured within sixty (60) Days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the POA; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2 *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 Area.

12.3 *Notice to POA.*

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

12.4 *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 POA does not receive a written response from the Mortgagee within thirty (30) Days of the date of the POA's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.5 *Construction of Article 12.*

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

ARTICLE 13: POA BOARD MEETINGS

13.1 *Notice of Board Meetings.*

Owners shall be given notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the POA Board by posting minutes on the official POA web site. These minutes will list the expected date of the subsequent meeting of the POA Board. Except during executive session, owners shall be given the opportunity at any such meeting to join in or to have its legally appointed representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Owners, their representatives or agents may make their concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

ARTICLE 14: GENERAL PROVISIONS

14.1 *Duration.*

Except as otherwise limited by Georgia law, this Declaration shall have perpetual duration.

14.2 *Amendment.*

(a) **By the Board.** The Board shall be authorized to amend this Declaration without the consent of the Members (i) for the purpose of conforming this Declaration to any mandatory provisions of the Georgia Property Owners' Association Act, and (ii) to correct scribes' errors and other mistakes of fact, provided that amendments under this provision have no material adverse effect on the rights of the Owners.

(b) **By Members.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total eligible votes in the POA.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date.** Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the POA without the written consent of the POA or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

It is recognized that, when owners fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, important amendments to the Declaration or By-Laws may have no chance of approval, with the two-thirds (2/3) voting requirements established under the Georgia Property Owners Association Act. It also is recognized that the two-thirds (2/3) voting requirements are important for Owner actions which are as significant as amending this Declaration or the By-Laws. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible owner an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration or By-Laws, but also a realistic mechanism for approving important amendments, without the damaging consequences of owner non-response.

The Board shall issue notice of all proposed amendments to each owner. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form or ballot, which complies with the requirements of the By-Laws and Georgia law. Each such consent form or ballot shall give Owners an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved or defeated by sufficient vote within 60 days of the amendment notice described above, then the Board may seek to obtain default approval from owners under this Section. In such case, the Board shall send default approval notice, by certified mail and to the address consistent with the notice provision of the By-Laws, to all owners who have not returned consents or ballots on a proposed amendment within that 60-day period. This default approval notice also shall include a consent form or ballot, as provided above, along with a statement that the owner's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within 30 days of the date of such default approval notice, the Owner shall be deemed to have consented to and approved the amendment. In the event of a conflict between this provision and the By-Laws, the terms of this provision shall control.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to correct any scrivener's errors, comply with any applicable state, city or federal law and/or to bring the Properties into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

14.3 *Severability.*

Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4 *Dispute Resolution.*

It is the intent of the POA to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the POA and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

14.5 *Non-Discrimination.*

No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age, or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

14.6 *Litigation.*

Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the POA unless approved by a vote of Owners holding seventy-five percent (75%) of the total POA vote. This Section shall not apply, however, to (a) actions brought by the POA to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the POA in proceedings instituted against it or (e) actions brought by the POA against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.7 *Grants.*

The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

14.9 *Cumulative Effect; Conflict.*

The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations, and the POA may, but shall not be required to, enforce such additional covenants, conditions, and provisions; provided however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and use restrictions and rules of the POA shall prevail. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the POA. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the POA shall have the standing and authority to enforce the same.

14.10 *Use of the "The Preserve at Sharp Mountain" Name and Logo.*

No Person shall use the words "*The Preserve at Sharp Mountain*" or "*Sharp Mountain Preserve*" or the logo for The Preserve at Sharp Mountain or any derivative in any printed or promotional material without the POA's prior written consent. However, Owners may use the words "*The Preserve at Sharp Mountain*" or "*Sharp Mountain Preserve*" in printed or promotional matter where such terms are used solely to specify that particular property is located within The Preserve at Sharp Mountain and the POA and any other community Association located in The Preserve at Sharp Mountain shall be entitled to use the words "*The Preserve at Sharp Mountain*" or "*Sharp Mountain Preserve*" in their name.

14.11 *Compliance.*

Every Owner and occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the POA or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the POA in Section 4.3.

14.12 *Notice of Sale or Transfer of Title.*

Any Owner desiring to sell or otherwise transfer title to a Lot shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.13 *Exhibits.*

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Officers of The Preserve at Sharp Mountain Association, Inc., hereby certify that this Restated Declaration and the following Amended and Restated Bylaws were duly adopted by the required vote of the Association and its membership, with any required notices duly given.

This 2nd day of November, 2015.

The Preserve at Sharp Mountain ASSOCIATION, INC.

Sworn to and subscribed before me this 2nd day of November, 2015.

By: Joyce W Carey
President

Witness: [Signature]

Attest: Jerry C. Givan

Signature/Office: Treasurer

Notary Public Janet C. Mueller
[Seal]



EXHIBIT A

LAND INITIALLY SUBMITTED

All that tract or parcel of land, together with improvements and appurtenances belonging thereto, lying and being in Pickens County, Georgia, as shown on a plat for survey by Chastain & Reece, P.C., dated April 21, 2000, a copy of which was recorded on February 13, 2001, in the Office of the Clerk of the Superior Court of Pickens County, Georgia, in Plat Book J.1, Page 179, and to which plat reference is hereby made for a more particular description of said land.

EXHIBIT B

ADDITIONAL PROPERTY (Exhibit Deleted)

EXHIBIT C

BY-LAWS OF THE PRESERVE AT SHARP MOUNTAIN ASSOCIATION, INC.

ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1 *Name.*

The name of the corporation is The Preserve at Sharp Mountain Association, Inc. (the "POA").

1.2 *Principal Office.*

The principal office of the POA shall be located in Pickens County, Georgia. The POA may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the POA may require.

1.3 *Definitions.*

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for The Preserve at Sharp Mountain filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

ARTICLE 2: POA MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

2.1 *Place of Meeting.*

Meetings of the POA shall be held at the principal office of the POA or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as is possible and practical. Meetings may be held by means of telephone conference, video conference, or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation by one of these methods shall constitute presence in person at such meeting.

2.2 *Annual Meeting.*

Annual meetings shall be held annually on a date and at a time set by the Board.

2.3 *Special Meetings.*

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting within thirty (30) days if so directed by resolution of the Board or upon a petition signed by Members representing at least twenty percent (20%) of the total eligible votes in the POA.

2.4 *Notice of Meetings.*

The Secretary shall give notice of each annual or special membership meeting to the record Owner or Owners of each Lot, or to the Lot address, at least 21 days prior to each annual membership meeting and at least seven days prior to each special membership meeting. The notice shall state the date, time and location of the meeting, and for any special meeting, the purpose of the meeting. Giving notice as provided in these Bylaws shall be considered proper service of notice.

No business shall be transacted at a meeting except as stated in the notice; provided however, if Members holding at least twenty percent (20%) of the votes are present at an annual meeting, in person or by proxy, matters in addition to those set forth in the notice of the meeting may be voted upon without further notice to the Members.

2.5 *Waiver of Notice.*

Waiver of notice of a meeting of the POA shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the POA, either before or after such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof, unless specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.6 *Adjournment of Meetings.*

If any meeting of the POA cannot be held because a quorum is not present, Members or their proxies holding a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than twenty (20) Days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be

transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 2.5.

2.7 *Voting.*

The voting rights of the Members shall be as set forth in the Declaration and Article 3 of the By-Laws, and such voting rights provisions are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots, or computer access.

2.8 *List for Voting.*

After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list shall show the address of the Member and the number of votes each is entitled to vote at the meeting. The list for voting shall be made available for inspection in accordance with Georgia law.

2.9 *Proxies.*

At all meetings of Members, each Member may vote in person (if a corporation, partnership, or limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Georgia law. Every proxy shall be in writing specifying the Lot(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated, and filed with the Secretary of the POA prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 *Quorum.*

The presence, in person or by proxy, of Members representing ten percent (10%) of the total eligible votes in the POA shall constitute a quorum at all meetings of the POA. If a quorum is present, business may be continued until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.11 *Conduct of Meetings.*

The President (or his or her designee) shall preside over all meetings of the POA, and the Secretary shall keep the minutes of the meetings and record in a physical or electronic minute book all resolutions adopted and all other transactions occurring at such meetings. Minutes must reflect the result of any vote. Votes (e.g., POA fee changes) not recorded in the official

minutes for the meeting in which the vote was taken, are not binding upon the owners. Votes taken during executive session, telephonically, or by E-MAIL shall be ratified at the next regular meeting open to the membership.

2.12 *Action Without a Meeting.*

In the Board's discretion, any action that may be taken by the Owners at any annual or special membership meeting may be taken without a meeting by written ballot or written consent as provided below.

(a) *Written Ballot.*

A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the vote cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the vote of approval equals or exceeds that which would be required to approve the matter at a meeting at which the total vote cast was the same as the vote cast by ballot.

All solicitations for votes by written ballot shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter, other than election of Directors; and (c) specify the time by which such ballot must be received by the Board of Directors in order to be counted. A ballot may not be revoked. The Association shall maintain such ballots in its file for at least three years.

Except for amendments to recorded Declaration or By-Laws that become effective upon recording, and except for actions that specifically set a later effective date, approval of any action taken by written ballot shall be effective upon the receipt of the affirmative vote necessary to take such action.

(b) *Written Consent.*

Approval by written consent shall be valid only when made pursuant to the requirements proscribed below and when the affirmative written consents received equals or exceeds the vote that would be required to approve the matter at a meeting. Consents shall be filed with the minutes of the membership meetings. Except for amendments to recorded Declaration or By-Laws that become effective upon recording, and except for actions that specifically set a later effective date, approval of any action taken by written consent shall be effective 10 days after sending the notice of approval described below.

(c) *Notice to Members of Approval.*

If an action of the Association membership is approved by written ballot or written consent, the Board of Directors shall issue notice of such approval to all Owners.

ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. POA Voting Rules

3.1 *Definitions.*

As used in these Rules, “Written Consent” or “Mail In Ballot ” refers to a written document prepared in accordance with these By-Laws and Rules and mailed to the Members of the Association entitled to vote on a particular matter put before the membership for approval.

B. Membership Actions

3.2 *Types of Membership Actions Subject to these Rules.*

Except as otherwise allowed by law, action by Mail-in Ballot or Written Consent shall be the only method for conducting all votes placed before the membership for approval, including, but not limited to, regarding Assessments, Directors, and amendments to the Declaration, By-Laws or Rules and Regulations, and subject to the rules proscribed herein. Annual and Special meetings of the Members may still be called, but votes on any matter requiring Member approval must be conducted pursuant to these Rules.

3.3 *Qualifications for Voting and Voting Power of Memberships.*

Only Members in good standing shall be considered “Members Entitled to Vote” for purposes of these Rules. In order to be in good standing, a Member must be current in the payment of all Assessments levied against the Member’s Lot and not be subject to any suspension of voting privileges as a result of any enforcement proceeding. A person meeting these qualifications shall be considered a “Member Entitled to Vote” for purposes of these Rules.

3.4 *Co-Owners of a Lot*

Co-Owners of a Lot, if otherwise qualified, shall be considered a single “Member Entitled to Vote” for purposes of these Rules.

3.5 *Each Member Entitled to Vote*

Each Member Entitled to Vote shall be entitled to cast one vote for each matter to be decided by the vote. In Director elections, each position to be filled on the Board is considered a separate matter to be decided, so that a Member Entitled to Vote may cast the number of votes equal to the number of positions on the Board to be filled.

3.6 *Single class of membership*

There is only a single class of membership in the Association. Each vote by a Member Entitled to Vote is entitled to the same weight in any election.

3.7 *By-laws do not allow cumulative voting*

By-laws do not allow cumulative voting. No more than one vote may be cast for the same candidate.

C. Nomination of Directors

3.8 *Board Members must be Members in good standing*

Board Members must be Members in good standing. In order to be in good standing, a Member must be current in the payment of all Assessments levied against the Member's Lot and not be subject to any suspension of voting privileges as a result of any enforcement proceeding. In addition, no Board Member may be a convicted felon, presently declared incompetent by the State, or a non-Preserve property owner. Board members must also be reasonably able to physically appear at and participate in 80% of the upcoming Board of Directors' meetings (defined roughly as 10 of 12 official Board of Directors' business meetings annually). Multiple Board Members may not share in the ownership of any given Lot within the Preserve. Any person meeting these qualifications may serve on the Board. Any person seeking election to the Board and meeting these qualifications will be considered a "Qualified Candidate" and eligible for election to the Board of Directors.

3.9 *Board shall send a request for nominations*

At least thirty days before the POA sends a Mail-in Ballot or Consent Form to the Members for election of Directors, the Board shall send a request for nominations to all Members, with a notice of the last date for submitting such nominations. Any Qualified Candidate may nominate himself or herself. Any such person shall complete, sign and return, by the date indicated, to the Nominating Committee (see below) the Application to be Director Nominee (Board Application), which will be included with the request for nominations. All persons so nominated shall be included on the Mail-in Ballot or Consent Form for election of Directors.

3.10 *Board shall appoint a Nominating Committee*

At least thirty days before the Association sends Mail-in Ballots or Consent Forms to the Members for election of Directors, the Board shall appoint a Nominating Committee whose duties shall include reviewing all Board Applications to determine if a candidate is a Qualified Candidate. The Nominating Committee may also solicit persons to run for the Board, but shall require all such persons to complete the Board Application.

3.11 *Identity of all persons who are Qualified Candidates*

At least thirty days before the Association sends Mail-in Ballots or Consent Forms to the Members for election of Directors, the Nominating Committee shall report to the Board the identity of all persons who are Qualified Candidates and whose names shall appear on the Ballot. If any person has submitted a Board Application and has been found by the Nominating Committee not to be a Qualified Candidate, the Nominating Committee shall notify such person in writing of its finding and the reasons why such person was found not to be a Qualified Candidate. The decision of the Nominating Committee is final.

D. Election of Directors

3.12 *Names of all Qualified Candidates*

The Mail-in Ballots or Consent Forms for Director Elections shall set forth the names of all Qualified Candidates whose names have been placed in nomination at the time the Mail-in Ballot or Consent Form is issued.

3.13 *Write-in Candidates*

The Mail-in Ballot or Consent Form shall provide a space where the Member can designate a vote for another (i.e., write-in) candidate. Write-in candidates must satisfy the qualification criteria of Section 3.8.

E. Form of Ballot

3.14 *Electronic ballots*

A system of “electronic ballots or consents” can or may be used. Ballot Codes shall be mailed by first-class mail to each Member Entitled to Vote at the address for the Member indicated in the Association records. If a Member wishes to have a Ballot Code sent to an address different than the address indicated in the Association’s records, such member must notify the Association in writing of the address to which the Ballot Code is to be sent prior to distribution of the Ballots. It is the responsibility of each Member to keep their Ballot Code confidential to prevent others from casting a ballot on their behalf. Multiple ballots received with identical Ballot Codes will be discarded.

3.15 *Ballot Codes*

One Ballot Code will be provided for each Lot. In the event there are multiple Owners of Lot, the Owners must jointly decide how the Ballot or Consent is to be completed. If a Ballot or Consent is misplaced, a duplicate Ballot or Consent will be provided upon written request of the Owner.

3.16 *Physical Ballots*

A Ballot or Consent will be administered by a physically mailed “invitation to vote” and a physical copy of the Ballot or Consent going to each Member Entitled to Vote at the physical address for the Member indicated in the Association records. If a Member wishes to have an “invitation to vote” sent to a physical address that is different from the address indicated in the Association’s records, the Member must notify the Association in writing of the address to which the Ballot or Consent is to be sent prior to distribution of the Ballots. Only one Member Entitled to Vote shall be allowed to access a designated POA voting web site where an anonymous vote can be cast electronically for a given set of issues, whereupon the Member Entitled to Vote will be locked out from voting again on the same set of issues. Alternatively, the physical Ballot or Consent can be returned with postmark prior the voting deadline.

3.17 *Deadline Statement*

Ballots or Consents shall state the time by which the Ballot or Consent must be received by the Inspector of Election in order to be counted. The deadline for return of the Ballots or Consents shall be at least thirty days after the date the Association mails the Ballots or Consents to the Members, but the Board may authorize a longer time period for Ballot or Consent return. The Board is responsible for issuing Ballots and Codes more than 30 days prior to the annual meeting. If the membership action is for the amendment of the Declaration or By-Laws, the provisions for default voting shall be followed.

3.18 *Voting Anonymity*

The electronic balloting web site shall not provide any method for identifying the Member who is voting. The Ballot Code will only provide certification that a Member has voted, but the actual vote will not be associated with the Ballot Code.

3.19 *Record Date*

The Board may determine a record date for each election conducted pursuant to these Rules and the Owner of record on such record date shall be entitled to receive a Ballot or Consent. If no record date is established by the Board, the record date shall be the date the Ballots invitations are mailed to the Members.

F. Proxies

3.20 *Proxy Instructions*

Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to cast the vote shall be between the Member and Proxy. A proxy vote can be effected by the Member providing the Proxy with his secret Ballot Code.

G. Inspectors of Election

3.21 *Inspectors of Election*

For all membership actions conducted under these Rules, the Board shall appoint either one or three persons to act as Inspectors of Election at least thirty days before sending Ballot Codes to the Members. Inspectors may be members of the Association but shall not be a member of the Board or a candidate for the Board or related to a Director or candidate for the Board. The Association's manager, counsel, accountant, or any other person not expressly disqualified under this Rule may serve as an Inspector of Election. Inspectors of Election may appoint and oversee additional persons to count and tabulate votes, if allowed by law.

3.22 *Duties of the Inspectors of Election*

The duties of the Inspectors of Election shall be as follows: determine the number of Members Entitled to Vote; receive Ballots or Consents and determine their validity; count and tabulate all votes; determine when the voting period closes; determine the results of the vote; hear and determine all challenges and questions in any way arising out of or in connection with the right to vote; and perform any other acts necessary to assure the fairness of the membership action. The Inspectors of Election may consult with others, including the Board and the Association's manager, with respect to performing their duties.

3.23 *Impartiality*

The Inspectors of Election shall perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as possible. If there are three Inspectors of Election, the decision or act of a majority of the inspectors shall be deemed to be the decision of all.

3.24 *Inspector Compensation*

The Inspectors of Election may be compensated for their services as inspectors as deemed appropriate by the Board.

H. Completion, Collection, and Tabulation of Ballots

3.25 *Voting Procedure*

Each Member not casting a Mail-in Ballot or Consent must complete the on-line Ballot or Consent pursuant to the instructions accompanying the Ballot or Consent. Persons owning multiple non-merged Lots must vote separately for each Lot owned, using the Ballot Codes issued to them.

3.26 *Tabulation*

Only the Inspectors of Election or their assistants may receive and inspect the balloting information. They will count the Ballots or Consents, tabulate the results, and announce the results to the Membership at the annual meeting and via E-MAIL. The Inspectors shall have the only access to the Ballots or consents until the voting is completed.

3.27 *Tabulation Location and Notification*

The Ballots or Consents shall be counted and tabulated by the Inspectors of Election in public at a properly noticed meeting of the Board or of the Members. The Inspectors shall promptly report the vote outcome to the Board and the outcome shall be recorded in the minutes of the next meeting of the Board and shall be available for review by the Members. Upon tabulation of the Ballots or Consents, the Board shall notify the Members of the outcome of the vote within fifteen days following the close of the voting process and tabulation of the Ballots or Consents.

3.28 *Tabulation Archive*

Following tabulation of the votes, the tallies of electronic votes stored on removable media shall be transferred by the Inspectors of Election to the custody of the Association, which shall keep the tallies in a secure location for at least three years.

3.29 *Recount or Challenge*

In the event of a recount or other challenge to the election process, the Association shall, upon written request, make the electronic tallies available for inspection and review by Members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

I. Election Campaigns

3.30 *Statement of Qualifications*

All candidates for the position of Director and any Member advocating a point of view relating to a particular membership action shall have one opportunity to state their qualifications and/or positions in writing at least sixty days before the Association sends Ballots or Consents to the Members. Qualifications and position papers shall be limited to 1500 words and submitted to the Board Secretary as a Portable Text File (.pdf). The Board Secretary will compile and format the various inputs for distribution to the Membership in a consistent unbiased format, listing candidates by office alphabetically or position papers by subject. The Board Secretary will see that the candidate qualifications and/or position papers are distributed to the entire membership in a manner similar to Ballot Code disbursal. Candidate qualifications and/or position papers may alternately be posted at the POA web site and visible to all Members. No candidates or advocates for a particular position shall have personal access to the Association's mailing lists. Candidates who campaign through spam E-Mailing of the Membership shall be disqualified at the discretion of the Board of Directors.

3.31 *Equal Access*

All candidates for the position of Director and any Member advocating a point of view relating to a particular membership action shall have equal access to Association common area facilities without cost for holding meetings or gatherings for purposes reasonably related to the membership action.

ARTICLE 4: OFFICERS

4.1 *Constitution of the Board of Directors.*

The POA Board of Directors shall consist of 5 or 7 members. The offices within the Board are President, Secretary, Treasurer. In the event that the Board cannot maintain 7 members, either through resignations, ineligibilities, or lack of interested candidates, the Board shall function as a Board with any number equal to or greater than 3 members. At any time that the Board falls below 3 members, the remaining two directors shall hold an immediate election in accordance with the procedures outlined above. Whenever the Board falls to an even number of members, a tie vote shall be considered as the motion having failed.

4.2 *Elections.*

Elections for the Board of Directors will be held annually during the month of June so as not to disrupt business during the transition of the Fiscal Year which runs January 1 through December 31. For continuity, only 3 of the Board members of a 5-member Board or 4 of a 7-member Board will be up for election in odd years with each Board member serving a 24-month term. During even years, only 2 of the Board members of a 5-member Board or 3 of a 7-member Board will be up for election with each Board member serving a 24-month term. When transitioning in any year from a 5-member Board to a 7-member Board, an additional 2 members will be elected. When transitioning in any year from a 7-member Board to a 5-member Board, the 2 longest serving members shall agree to step down, and 2 or 3 positions shall be up for election depending upon whether the year is odd or even. In the event that one or more Board members become ineligible

or resigns between June 1 and December 31, a special election can be called by the remaining Board members, and shall proceed on the outlined schedule, but at a date prescribed by the remaining Board members. In the event that one or more Board members become ineligible or resigns between January 1 and May 31, the positions will be filled during the normally-scheduled June election.

4.3 *Terms of Office.*

Members of the Board of Directors shall serve a 24-month term and are re-electable for a second 24-month term, but having served two consecutive terms, a Board member must wait 12 months before being eligible to run again.

4.4 *Removal of Officers.*

Members of the Board of Directors can be removed due to ineligibility at any time at the discretion of all remaining eligible Board members. The Membership may also have a member of the Board of Directors removed by a “vote of no confidence” regardless of the Board member’s status as a qualified eligible member of the Board. A petition of 51% of the POA membership in good standing, delivered to the Secretary of the Board, calling for the removal of a particular Board member shall cause the Board to administer an official “vote of confidence” using the same procedures to conduct the vote as would be common in the annual election process, except that it can be done at any time. Upon receiving a 67% majority no-confidence vote, the Board will dismiss the particular Board member, and depending upon the point in the election cycle, may call for nominations to fill the vacant slot.

4.5 *Powers and Duties.*

The officers of the POA shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the POA. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The Secretary shall be responsible for preparing and posting minutes of meetings of the POA and the Board and for authenticating records of the POA.

4.6 *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.

4.7 *Agreements, Contracts, Deeds, Leases, Checks, etc.*

All agreements, contracts, deeds, leases, checks, and other instruments of the POA shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

4.8 *Compensation.*

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 4.16.

4.9 *Organizational Meetings.*

Within thirty (30) days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

4.10 *Regular Meetings.*

Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each year.

4.11 *Special Meetings.*

Special meetings of the Board shall be held when called by written notice signed by the President or by any two (2) directors.

4.12 *Notice.*

Notice of a regular meeting shall be communicated to directors not less than four (4) Days prior to the meeting. Notice of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; or overnight or same day delivery, charges prepaid; or (g) electronic mail or E-MAIL using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an electronic mail or E-MAIL address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, or E-MAIL shall be deemed communicated when delivered, telephoned, telecopied, E-MAILED or given to the telegraph company.

4.13 *Waiver of Notice.*

The transactions of any meeting of the Board, 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 also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

4.14 *Participation in Meetings.*

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference, or similar

communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

4.15 *Quorum of Board of Directors.*

At all meetings of the Board, 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, unless otherwise specifically provided in these By-Laws or the Declaration. 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 of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) Days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

4.16 *Compensation.*

Directors shall not receive any compensation from the POA for acting as such unless approved by Members representing a Majority votes in the POA at a regular or special meeting of the POA. Any director may be reimbursed for expenses incurred on behalf of the POA upon approval of a Majority of the other directors. Nothing herein shall prohibit the POA from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the POA in a capacity other than as a director pursuant to a contract or agreement with the POA, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the Board, excluding the interested director.

4.17 *Conduct of Meetings.*

The President (or his or her designee) shall preside over all meetings of the Board, and the Secretary shall keep minutes of Board meetings, recording all Board resolutions and all transaction and proceedings occurring at such meetings either physically or electronically.

4.18 *Open Meetings.*

Subject to the provisions of Sections 4.14 and 4.19, 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 permission to speak is requested on a Member's behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board, reconvene in executive session, and exclude Members to discuss matters of a sensitive nature. Matters of a sensitive nature are limited to contract negotiations, lawsuits, discussion of delinquent property owners, or specific Covenant violations or anything personal involving private individuals shall be discussed in executive session.

4.19 *Action Without a Formal Meeting.*

Any action that could be taken at a meeting of the directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by a majority of the directors. Such signed, written consents must be filed with the minutes of the Board meetings.

4.20 *Powers.*

The Board shall have all of the powers and duties necessary for the administration of the POA's affairs and for performing all responsibilities and exercising all rights of the POA as set forth in the Governing Documents and as provided by law. The Board may also do or cause to be done all acts and things which the Governing Documents or Georgia law do not direct to be done, so long as they are not in conflict and exercised exclusively by the membership generally.

4.21 *Duties.*

The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the POA and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the POA in a bank depository which it shall approve and using such funds to operate the POA, provided any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the POA and designating the signatories required;
- (h) contracting for repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the POA; provided, the POA shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the POA's position is not strong enough to justify taking enforcement action;

- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the costs of all services rendered to the POA;
- (l) keeping books with detailed accounts of the receipts and expenditures of the POA;
- (m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the POA as provided in Section 6.4;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the POA to the extent such indemnity is required or permitted under Georgia law or the Governing Documents.

4.22 *Management.*

The Board may employ for the POA a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority.

The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

4.23 *Accounts and Reports.*

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the POA shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the POA, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise: any item of value received shall benefit the POA;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the POA shall be disclosed promptly to the Board; and

(f) an annual financial report shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines.

4.24 *Borrowing.*

The POA shall have the power to borrow money for any legal purpose; provided however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the POA for that fiscal year, the Board shall obtain the approval of Members holding at least sixty-seven percent (67%) of the total eligible votes allocated to Lots prior to borrowing such money.

4.25 *Right to Contract.*

The POA shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents POA, within and outside the Properties.

ARTICLE 5: COMMITTEES

5.1 *General.*

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Unless otherwise provided by the Board, committee members shall be eligible Members or residents; provided however, no Member may have more than one (1) representative on a committee at any time. No committee appointed by the Board shall be empowered to take any affirmative action or to bind the Board or the POA without the consent of the Board.

5.2 *Covenants Committee.*

In addition to any other committees which the Board may establish pursuant to the Declaration, these By-Laws and, specifically, Section 5.1, the Board may appoint a Covenants Committee consisting of at least three (3) and no more than five (5) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the POA and shall conduct all hearings held pursuant to these By-Laws.

ARTICLE 6: MISCELLANEOUS

6.1 *Fiscal Year.*

The fiscal year of the POA shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. *Parliamentary Rules.*

Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of POA proceedings when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. *Conflicts.*

If there are conflicts 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.

6.4 *Books and Records.*

(a) *Inspection by Members and Mortgagees.* The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, By-Laws, and Articles of Incorporation, any amendments and supplements to the foregoing, the rules of the POA, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the POA or at such other place within the Properties as the Board shall designate, during normal business hours.

(b) *Rules for Inspection.* The Board may 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 requested.

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

(d) *Format for Records.* Books and records for the Association may be physical or electronic. If electronically stored, a means of backup shall be used. This backup may likewise be either physical or electronic.

6.5 *Notices.*

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the POA, the Board, or the managing agent, at the principal office of the POA or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the POA, may consent to or request in writing additional methods of receiving notice, including but not limited to, facsimile, electronic mail.

6.6 *Amendment.*

(a) *By Members.* These By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven percent (67%) of the eligible votes in the POA. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(b) *Validity and Effective Date.* Any amendment to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of the POA, a Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

(c) *Default Voting.* It is recognized that, when owners fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, important amendments to the Declaration or By-Laws may have no chance of approval, with the two-thirds (2/3) voting requirements established under the Georgia Property Owners Association Act. It also is recognized that the two-thirds (2/3) voting requirements are important for Owner actions which are as significant as amending this Declaration or the By-Laws. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible owner an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration or By-Laws, but also a realistic mechanism for approving important amendments, without the damaging consequences of owner non-response.

The Board shall issue notice of all proposed amendments to each owner. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form or ballot, which complies with the requirements of the By-Laws and Georgia law. Each such consent form or ballot shall give Owners an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved or defeated by sufficient vote within 60 days of the amendment notice described above, then the Board may seek to obtain default approval from owners under this Section. In such case, the Board shall send default approval notice, by certified mail and to the address consistent with the notice provision of the By-Laws, to all owners who have not returned consents or ballots on a proposed amendment within that 60-day period. This default approval notice also shall include a consent form or ballot, as provided above, along with a statement that the owner's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within 30 days of the date of such default approval notice, the Owner shall be deemed to have consented to and approved the amendment. In the event of a conflict between this provision and the By-Laws, the terms of this provision shall control.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to correct any scrivener's errors, comply with any applicable state, city or federal law and/or to bring the Properties into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

AMENDMENTS

(Amendments are hereby referenced and attached as an appendix to Exhibit C)

PICKENS COUNTY FILED FOR RECORD ON
THE 24 DAY OF Aug. 20 12
10:30 A.M. RECORDED THIS 3 DAY OF
Sept 20 12 BOOK NO 372 PAGE 13-
GAIL BROWN CSC 14

Return To: Lazega & Johanson, LLC
3520 Piedmont Road, N.E., Suite 415
Atlanta, Georgia 30305 Attn: MMR

[Space Above Reserved for Recording Data]

Cross Reference: Deed Book 395
Page 213

GEORGIA/PICKENS

**AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE PRESERVE AT SHARP MOUNTAIN AND TO THE
BY-LAWS OF THE PRESERVE AT SHARP MOUNTAIN ASSOCIATION, INC.**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for The Preserve at Sharp Mountain was recorded on March 7, 2001, in Deed Book 395, Page 213, *et seq.*, Pickens County, Georgia records (“Declaration”), as amended; and

WHEREAS, the By-Laws of The Preserve at Sharp Mountain Association, Inc. were recorded as Exhibit “C” to the Declaration; and

WHEREAS, Article 14, Section 14.2(c) of the Declaration provides that the Declaration may be amended by the affirmative vote, written consent, or any combination thereof, of Members holding sixty-seven (67%) of the total Class “A” votes in the Association, and, during the Development Period, the written consent of the Declarant; and

WHEREAS, Article 6, Section 6.6(c) of the By-Laws provide that the By-Laws be amended by the affirmative vote, written consent, or any combination thereof, of Members holding sixty-seven (67%) of the total Class “A” votes in the Association, and, during the Development Period, the written consent of the Declarant; and

WHEREAS, the Development Period has ended in accordance with the terms of the Declaration; and

WHEREAS, Members holding sixty-seven (67%) percent of the total Class “A” votes in the Association desire to amend the Declaration and have approved this Amendment.

NOW, THEREFORE, the Declaration and By-Laws are hereby amended as follows:

1.

Paragraph 14.2(c) of the Declaration and Article 6, Section 6.6(c) of the By-Laws are hereby amended by adding the following to the end thereof:

It is recognized that, when owners fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, important amendments to the Declaration or By-Laws may have no chance of approval, with the two-thirds (2/3) voting requirements established under the Georgia Property Owners Association Act. It also is recognized that the two-thirds (2/3) voting requirements are important for Owner actions which are as significant as amending this Declaration or the By-Laws. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible owner an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration or By-Laws,

but also a realistic mechanism for approving important amendments, without the damaging consequences of owner non-response.

The Board shall issue notice of all proposed amendments to each owner. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form or ballot, which complies with the requirements of the By-Laws and Georgia law. Each such consent form or ballot shall give Owners an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved or defeated by sufficient vote within 60 days of the amendment notice described above, then the Board may seek to obtain default approval from owners under this Section. In such case, the Board shall send default approval notice, by certified mail and to the address consistent with the notice provision of the By-Laws, to all owners who have not returned consents or ballots on a proposed amendment within that 60-day period. This default approval notice also shall include a consent form or ballot, as provided above, along with a statement that the owner's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within 30 days of the date of such default approval notice, the Owner shall be deemed to have consented to and approved the amendment. In the event of a conflict between this provision and the By-Laws, the terms of this provision shall control.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to correct any scrivener's errors, comply with any applicable state, city or federal law and/or to bring the Properties into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

IN WITNESS WHEREOF, the undersigned officers of The Preserve at Sharp Mountain Association, Inc., hereby certify that the above Amendment to the Declaration and the By-Laws was duly adopted by Association members holding the required sixty-seven (67%) percent of the Class "A" votes, with any required notices properly given, this 31 day of July, 2012.

Sworn to and subscribed to before me this 31 day of July, 2012.

Carrie Turner
Witness

Wende S. Baird
Notary Public

[Notary Seal]

MY COMMISSION EXPIRES APRIL 29, 2014

THE PRESERVE AT SHARP MOUNTAIN ASSOCIATION, INC.

By: [Signature] (Seal)
President

Attest: [Signature] (Seal)
Signature/Title: TREASURER

[Corporate Seal]