

MURRAY COUNTY, GEORGIA

Filed 9:00 AM July 7, 2014

Recorded July 7, 2014

Deed Book 812 Page 179

  
Clerk of Superior Court

Return recorded to:  
THE LANCE LAW FIRM, PC  
57 Sears Way  
Blairsville, GA 30512

*\*\*Cross-reference with Covenants in Deed Book 561,  
Pages 103-128, Deed Book 806, Pages 96-98, Deed Book  
806, Page 627, Murray County, Georgia records.*

STATE OF GEORGIA  
COUNTY OF MURRAY

**THIRD AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND  
EASEMENTS FOR THE SUMMIT OF FORT MOUNTAIN**

The undersigned Declarant, by their presence hereby makes, declares and imposes upon the referenced parts of the property described, the following Third Amendment to Declaration of Covenants, Restrictions and Easements for The Summit of Fort Mountain, and by their signature below as allowed, provided for and pursuant to the Declaration section Duration and Amendment, which shall be and constitute running with the land and shall be binding under it, and each and all subsequent purchasers, their heirs, personal representatives, successors and assigns of said property or any part, parcel or portion thereof, described as follows:

All that tract or parcel of land lying and being in Land Lots 210, 26<sup>th</sup> District, 2<sup>nd</sup> Section, Murray County, Georgia, and being more fully described on the attached Exhibit "A", incorporated herein by reference and made a part hereof.

The undersigned Declarant agrees to amend the Restrictions as follows:

- (1) Article I Definitions of the Declaration of the Restrictions recorded in Deed Book 561, pages 103-128, Murray County records, specifically the definition entitled ASSOCIATION shall be **deleted in its entirety** and said definitions shall read as follows:

**ASSOCIATION. "Association" means SUMMIT OF FORT MOUNTAIN POA INC. (a non-profit corporation organized under the Georgia Non-profit Corporation Code), its successor and assigns.**

Except as amended herein, all the provisions the Declaration as set out in the  
aforementioned restrictions, and any amendments thereto, are hereby incorporated by reference  
as if the same were set out in full.

In witness whereof, the owners hereby set their hands and seals this, the 19<sup>th</sup> day of June,  
2014.

Lynne Stokke  
Witness

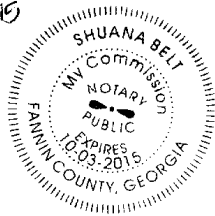
Shuana Belt

Notary Public

My Commission Expires: 10/03/2015

**FORT MOUNTAIN VENTURES, LLC**  
SFMV, LLC – Managing Member

[Signature]  
By: John J. Snow, Manager of SFMV, LLC



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### EXHIBIT "A"

All that certain tract of land, containing 147.49 acres of Land Lot 210 in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, designated as Tract A according to a plat of survey prepared by Joel Jordan, GRLS No. 2430, dated October 15, 1998, recorded in the Office of the Clerk of Superior Court of Murray County, Georgia, in Plat Book 33, Page 132, and said plat and the description set out therein are by reference incorporated herein for a more particular description of said land.

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, and being part of Original Land Lot 210, being designated as Lots 3, 4, 6 and 7, as shown on that plat of survey prepared for the Summit of Fort Mountain, Phase II, prepared by Max Randall Compton, GRLS #2584. Said plat is recorded in Plat Book 40, Pages 196-197, Murray County, Georgia records.

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, and being part of Original Land Lot 210, being designated as Lots 16 and 45, as shown on that plat of survey prepared for the Summit of Fort Mountain, Phase III, prepared by Max Randall Compton, GRLS #2584. Said plat is recorded in Plat Book 42, Pages 93, Murray County, Georgia records.

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, and being part of Original Land Lot 210, being designated as Lots 17, 20, 25, 27, 28 and 29, as shown on that plat of survey prepared for the Summit of Fort Mountain, Phase I, prepared by Max Randall Compton, GRLS #2584. Said plat is recorded in Plat Book 40, Pages 195, Murray County, Georgia Records.

MURRAY COUNTY, GEORGIA  
Filed 9:00A M April 4, 2014  
Recorded April 4, 2014  
Deed Book 806 Page 627  
Nana Hood  
Clerk of Superior Court

Return recorded to:  
THE LANCE LAW FIRM, PC  
57 Sears Way  
Blairsville, GA 30512

*\*\*Cross-reference with Covenants in Deed Book 561,  
Pages 103-128 and Deed Book 806, Pages 96-98, Murray  
County, Georgia records.*

STATE OF GEORGIA  
COUNTY OF MURRAY

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS  
AND EASEMENTS FOR THE SUMMIT OF FORT MOUNTAIN**

The undersigned Declarant, by their presence hereby makes, declares and imposes upon the referenced parts of the property described, the following Second Amendment to Declaration of Covenants, Restrictions and Easements for The Summit of Fort Mountain, and by their signature below as allowed, provided for and pursuant to the Declaration section Duration and Amendment, which shall be and constitute running with the land and shall be binding under it, and each and all subsequent purchasers, their heirs, personal representatives, successors and assigns of said property or any part, parcel or portion thereof, described as follows:

All that tract or parcel of land lying and being in Land Lots 210, 26<sup>th</sup> District, 2<sup>nd</sup> Section, Murray County, Georgia, and being more fully described on the attached Exhibit "A", incorporated herein by reference and made a part hereof.

The undersigned Declarant agrees to amend the Restrictions as follows:

- (1) Paragraph IV Assessments of the Declaration of the Restrictions recorded in Deed Book 561, pages 103-128, Murray County records, specifically the paragraph entitled UNIFORM RATE OF ASSESSMENT AND CONSOLIDATION OF HOMESITES shall be **deleted in its entirety** and said paragraph shall read as follows:


**UNIFORM RATE OF ASSESSMENT AND CONSOLIDATION OF HOMESITES. Both annual and special assessments must be fixed at a uniform rate for all Homesites; provided, however, that upon written request by owner to Declarant or the Association, contiguous Homesites may be consolidated into one Homesite for purposes of assessment.**

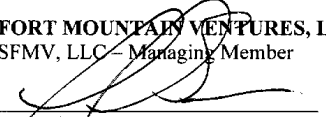
- (2) Paragraph VI General Covenants and Restrictions of the Declaration of the Restrictions recorded in Deed Book 561, pages 103-128, and as Amended in Deed Book 806, Page 96, Murray County, specifically the paragraph entitled RESTRICTION OF USE shall be **deleted in its entirety** and said paragraph shall read as follows:

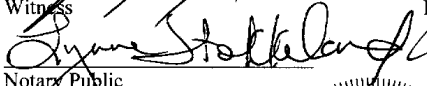
**RESTRICTION OF USE.** Homesites may be used for single-family residences only. Vacation rentals or similar arrangements shall be allowed. Notwithstanding anything elsewhere herein, camping by a property owner, the owners family and guests, shall be allowed on the owner's lot or tract for a maximum period of seven (7) days once in a thirty (30) day period and so long as professional camping equipment is used.

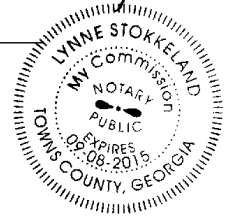
Except as amended herein, all the provisions the Declaration as set out in the aforementioned restrictions, and any amendments thereto, are hereby incorporated by reference as if the same were set out in full.

In witness whereof, the owners hereby set their hands and seals this, the 3<sup>rd</sup> day of April, 2014.

  
\_\_\_\_\_  
Witness

**FORT MOUNTAIN VENTURES, LLC**  
SFMV, LLC – Managing Member  
  
\_\_\_\_\_  
By: John J. Snow, Manager of SFMV, LLC

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



**EXHIBIT "A"**

All that certain tract of land, containing 147.49 acres of Land Lot 210 in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, designated as Tract A according to a plat of survey prepared by Joel Jordan, GRLS No. 2430, dated October 15, 1998, recorded in the Office of the Clerk of Superior Court of Murray County, Georgia, in Plat Book 33, Page 132, and said plat and the description set out therein are by reference incorporated herein for a more particular description of said land.

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, and being part of Original Land Lot 210, being designated as Lots 3,4, 6 and 7, as shown on that plat of survey prepared for the Summit of Fort Mountain, Phase II, prepared by Max Randall Compton, GRLS #2584. Said plat is recorded in Plat Book 40, Pages 196-197, Murray County, Georgia records.

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, and being part of Original Land Lot 210, being designated as Lots 16 and 45, as shown on that plat of survey prepared for the Summit of Fort Mountain, Phase III, prepared by Max Randall Compton, GRLS #2584. Said plat is recorded in Plat Book 42, Pages 93, Murray County, Georgia records.

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, and being part of Original Land Lot 210, being designated as Lots 17, 20, 25, 27, 28 and 29, as shown on that plat of survey prepared for the Summit of Fort Mountain, Phase I, prepared by Max Randall Compton, GRLS #2584. Said plat is recorded in Plat Book 40, Pages 195, Murray County, Georgia Records.

MURRAY COUNTY, GEORGIA  
Filed 9:00 AM March 27 2014  
Recorded March 27, 2014  
Deed Book 806 Page 96  
DINA S. COOK  
Clerk of Superior Court

Return recorded to:  
THE LANCE LAW FIRM, PC  
57 Sears Way  
Blairsville. GA 30512

*\*\*Cross-reference with Covenants in Deed Book 561,  
Pages 103-128, Murray County, Georgia records.*

STATE OF GEORGIA  
COUNTY OF MURRAY

**AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND  
EASEMENTS FOR THE SUMMIT OF FORT MOUNTAIN**

The undersigned Declarant, by their presence hereby makes, declares and imposes upon the referenced parts of the property described, the following Amendment to Declaration of Covenants, Restrictions and Easements for The Summit of Fort Mountain, and by their signature below as allowed, provided for and pursuant to the Declaration section Duration and Amendment, which shall be and constitute running with the land and shall be binding under it, and each and all subsequent purchasers, their heirs, personal representatives, successors and assigns of said property or any part, parcel or portion thereof, described as follows:

All that tract or parcel of land lying and being in Land Lots 210, 26<sup>th</sup> District, 2<sup>nd</sup> Section, Murray County, Georgia, and being more fully described on the attached Exhibit "A", incorporated herein by reference and made a part hereof.

The undersigned Declarant agrees to amend the Restrictions as follows:

- (1) Paragraph IV Assessments of the Declaration of the Restrictions recorded in Deed Book 561, pages 103-128, Murray County records shall be amended to add the assessment fees language as follows:

**ASSESSMENTS.** (a) The initial assessments shall be \$400.00 per lot per year, except no assessment is due on any Lot owned by Declarant until Declarant sells said Lot.

- (2) Paragraph VI General Covenants and Restrictions of the Declaration of the Restrictions recorded in Deed Book 561, pages 103-128, Murray County records shall be amended to add the following language to each specified paragraph as follows:

**RESTRICTION OF USE.** Notwithstanding anything elsewhere herein, camping by a property owner, the owners family and guests, shall be allowed on the owner's lot or tract for a maximum period of seven (7) days once in a thirty (30) day period and so long as professional camping equipment is used.

**RE-SUBDIVISION OF PROPERTY.** The only exception shall be the 19.41 acres designated as Future Development as shown on the Final Subdivision Plat for The Summit of Fort Mountain Phase III & IV recorded in Plat Book 42, Pages 93-97, Murray County records, may be subdivided but shall be restricted to parcels equaling no less than four (4) acre each.

**TREES.** No clear cutting of tress shall be allowed.

**TEMPORARY BUILDINGS.** Temporary buildings shall not include tent camping as specified under Restriction of Use above.

- (3) Paragraph VI the paragraph Square Footage under the General Covenants and Restrictions of the Declaration of the Restrictions recorded in Deed Book 561, pages 103-128, Murray County records shall be deleted in its entirety and the paragraph shall be amended to read as follows:

**SQUARE FOOTAGE:** No single family residential structure shall be located on any Homesite unless such structure shall have at least 1,600 square feet of heated living area. If any such structure is more than one (1) story, the first floor of such structure shall have at least 1,000 square feet of heated living area. Nothing herein shall prohibit the Declarant from departing from such square footage requirements in a future phase or phases of the community, provided that such modification appears on the recorded subdivision plat.

- (4) Paragraph VI General Covenants and Restrictions of the Declaration of the Restrictions recorded in Deed Book 561, pages 103-128, Murray County records shall be amended to add the following paragraph as follows:

**ANIMALS.** No animals, birds, or fowls shall be kept or maintained on any part of the property except ordinary household pets (e.g. dogs, cats and pet birds) which may be kept thereon in reasonable number as pets for the pleasure and use of the occupants. No livestock, goats or pigs shall be allowed. No animal shall be kept on any size lot for any commercial purpose.

Except as amended herein, all the provisions the Declaration as set out in the aforementioned restrictions, and any amendments thereto, are hereby incorporated by reference as if the same were set out in full.

In witness whereof, the owners hereby set their hands and seals this, the 28 day of February, 2014.

**FORT MOUNTAIN VENTURES, LLC**  
SFMV, LLC – Managing Member

By: John J. Snow, Manager of SFMV, LLC

Witness

*Kimberly S Johnson*  
Notary Public  
My Commission Expires: May 25, 2018

Kimberly S Johnson  
Notary Public  
Cherokee County, NC



**EXHIBIT "A"**

All that certain tract of land, containing 147.49 acres of Land Lot 210 in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, designated as Tract A according to a plat of survey prepared by Joel Jordan, GRLS No. 2430, dated October 15, 1998, recorded in the Office of the Clerk of Superior Court of Murray County, Georgia, in Plat Book 33, Page 132, and said plat and the description set out therein are by reference incorporated herein for a more particular description of said land.

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, and being part of Original Land Lot 210, being designated as Lots 3,4, 6 and 7, as shown on that plat of survey prepared for the Summit of Fort Mountain, Phase II, prepared by Max Randall Compton, GRLS #2584. Said plat is recorded in Plat Book 40, Pages 196-197, Murray County, Georgia records.

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, and being part of Original Land Lot 210, being designated as Lots 16 and 45, as shown on that plat of survey prepared for the Summit of Fort Mountain, Phase III, prepared by Max Randall Compton, GRLS #2584. Said plat is recorded in Plat Book 42, Pages 93, Murray County, Georgia records.

LESS AND EXCEPT: All that tract or parcel of land lying and being in the 26<sup>th</sup> District, 2<sup>nd</sup> Section of Murray County, Georgia, and being part of Original Land Lot 210, being designated as Lots 17, 20, 25, 27, 28 and 29, as shown on that plat of survey prepared for the Summit of Fort Mountain, Phase I, prepared by Max Randall Compton, GRLS #2584. Said plat is recorded in Plat Book 40, Pages 195, Murray County, Georgia Records.

As.  
plw  
MURRAY

Declaration of Covenants, Restrictions and Easements **MURRAY COUNTY, GEORGIA**

for

**THE SUMMIT OF FORT MOUNTAIN**

Filed 2:45 P.M. June 24, 2005  
 Recorded June 24 2005  
 Deed Book 561 Page 103  
Levin Matthews  
 Clerk Superior Court

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR THE SUMMIT OF FORT MOUNTAIN is made this \_\_\_\_ day of June, 2005 by The Summit of Fort Mountain, LLC, a Limited Liability Company organized and existing pursuant to the laws of the State of Georgia (hereinafter referred to as Declarant).

#### BACKGROUND STATEMENT

This Declaration shall be applicable to those subdivided lots (the "Homesites"), roads and Common Property which appear on the approved Final Plats for THE SUMMIT OF FORT MOUNTAIN ("THE SUMMIT"), which are filed of record in the Office of Superior Court of Murray County. This Declaration shall be applicable to Homesites in future phase of said subdivision, the deeds (or Final Plat) to which bear express reference to this Declaration. Nothing herein shall be construed as an obligation on the part of Declarant to subject other phases or lots in the subdivision to this declaration.

Declarant intends by this Declaration to create mutually beneficial Restrictions under a general plan of improvement for the benefit of all owners of all phases, present and future, of property within THE SUMMIT OF FORT MOUNTAIN, by the recording of this Declaration and amendments thereto. Declarant desires to provide a flexible and reasonable procedure for the overall development of THE SUMMIT OF FORT MOUNTAIN. Declarant also desires to establish a method of administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to this declaration and certain other properties described in the Declaration.

Declarant has caused the Association ( as hereinafter defined) to be formed as a non-profit corporation charged with administering the common good and general welfare of the Owners (as hereinafter defined).

Declarant hereby declares that the subject real property shall be held, sold and conveyed subject to this Declaration of Covenants, Restrictions and Easements, for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The Covenants, Restrictions and Easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided,

inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

*Article I*  
Definitions

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

**ARCHITECTURAL CONTROL COMMITTEE.** "Architectural Control Committee" or "ACC" means the committee created by Article V of this Declaration as the same may be constituted from time to time.

**ASSOCIATION.** "Association" means THE SUMMIT OF FORT MOUNTAIN Owners Association, Inc. (a non-profit corporation organized under the Georgia Non-profit Corporation Code), its successors and assigns.

**BOARD.** "Board" means the Board of Directors of the Association.

**BY-LAWS.** "By-Laws" means the By-Laws of the Association.

**COMMENCEMENT DATE.** "Commencement Date" means the date on which the first Homesite is sold to a third party.

**COMMON PROPERTY.** "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

**DECLARANT.** "Declarant" means The Summit of Fort Mountain, LLC, a Georgia limited liability company, and its successors-in-title and assigns. The rights of Declarant shall be assignable (but only in their entirety) provided that the assignment of the Declarant's rights make specific reference thereto.

**HOMESITE.** "Homesite" or "Home site" means any parcel of land designated as such (or as a "lot") on a subdivision plat recorded in the Office of the Clerk of the Superior Court of Gilmer County, provided, however, that no portion of the Common Property shall ever be a Homesite except as provided in Article II.

**MEMBER.** "Member" means any member of the Association.

**MEMBERSHIP.** "Membership" means the collective total of all Members of the Association.

**OWNER.** "Owner" means the record owner (including Declarant) of a fee simple title (excluding security interests) to any Homesite.

**PROPERTY.** "Property" means that certain real property hereinabove described together with such additional real property as may be subjected to the provisions of this Declaration in accordance with the provisions of Articles X hereof.

**RESTRICTIONS.** "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

**RULES AND REGULATIONS.** "Rules and Regulations" means all rules and regulations promulgated by the Declarant or the Board respecting the use and appearance of Common Property and private property within The Summit of Fort Mountain.

**STRUCTURE.** "Structure" means: any thing or object the placement of which upon any Homesite may affect the appearance of such Homesite, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse, or bathhouse, coop or cage, covered or uncovered patio, structures with water features, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement to such Homesite; any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Homesite, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Homesite; and, any change in the grade at any point on a Homesite of more than six (6) inches.

## *Article II* Common Property

**CONVEYANCE OF COMMON PROPERTY.** The Declarant may from time to time convey to the Association, and the Association shall accept from the Declarant, real and personal property, or interests therein, for the common use and enjoyment of the Owners (such real and personal property is hereinafter collectively referred to as "Common Property"), for other purposes, and, to the extent set forth in this Declaration, the general public.

**RIGHT OF ENJOYMENT.** Every Owner of a Homesite shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Homesite; provided, however, that no Owner shall do any act which interferes with the free use and

enjoyment of the Common Property by other Owners. The Board may permit persons who are not Owners to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The rights of enjoyment granted by this Article are subject to suspension by the Association as provided in this Declaration; provided that at no time shall the Association suspend the right of an owner to access to such owner's Homesite over and across the private community roads.

**RIGHTS OF THE ASSOCIATION.** The Board may promulgate rules and regulations relating to the use, operation and maintenance of the Common Property; grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system; dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes. The Association or the Declarant, as the case may be, reserves the right to impose a reasonable charge for the use of certain facilities within or related to the community, including but not limited to boat storage.

**TYPES OF COMMON PROPERTY.** At the time of the conveyance of any real property or grant of easement by Declarant to the Association to be used as Common Property, Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of the Members of the Association, be used for any different purpose or purposes without the prior written consent of Declarant.

**DELEGATION OF USE.** Any Owner may delegate to the members of his family or his tenants who reside on a Homesite, in accordance with the By-Laws, his right to use and enjoy the Common Property.

**MAINTENANCE.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitations, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain grass and other landscaping located along or in dedicated rights of way that were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority.

The Association shall also have the right, but not the obligation to maintain and provide services for other property not owned by the Association whether located within or without the boundaries of the Community, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit the Owners

*Article III*  
Homeowners Association

**PURPOSES, POWERS AND DUTIES OF THE ASSOCIATION.** The Association shall be a non-profit corporation for the sole purpose of administering to the common good and general welfare of the community and its members.

**MEMBERSHIP IN THE ASSOCIATION.** Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Restrictions and Easements. For purpose of voting, there shall be two (2) classes of Members as set forth in this Article.

**VOTING RIGHTS.** Each Owner of a Homesite, with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A Vote per Homesite. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association. Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Homesite owned by Declarant. Subject to the terms and conditions herein, the Class B Membership shall cease and be converted to Class A Membership when the total number of votes outstanding in the Class A Membership equals the total number of votes outstanding in the Class B Membership. The Development will be composed of Homesites to be developed in phases containing unequal numbers of Homesites. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Murray County in accordance with Article X. Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Homesite, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding added in the Association will automatically increase based upon the number of Homesites in the phases added and in accordance with the formula set forth in this section and in no event shall Class B Membership cease and be converted to Class A Membership until after the Association receives the written notice of final phase platting; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development.

**SUSPENSION OF MEMBERSHIP.** The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who: shall be subject to the Right of Abatement, as defined in Article VIII by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions of the Design Standards of the Architectural Control Committee; shall be delinquent in the payment of any assessment levied by the Association; or, shall be in violation of the rules and regulations of the

Association relating to the use, operation and maintenance of Common Property or private property. Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in this subarticle, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's access to and from Homesite.

**TERMINATION OF MEMBERSHIP.** Membership shall cease only when a person ceases to be an Owner.

**CONTROL BY DECLARANT.** (a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of the Association and any officer of officers of the Association until such time as the first of the following events shall occur; (i) the date upon which 75% the Homesites have been conveyed; or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers by an instrument in writing and delivered to the Association, Notwithstanding anything herein to the contrary, the Declarant may, at the time of such surrender, elect to convert its Class B votes into Class A votes.

(b) Upon the expiration of the Declarant's right to appoint and remove directors and officers of the Association pursuant, a special meeting of the Association shall be called for the purpose of electing a Board of Directors.

#### *Article IV* Assessments

**COVENANT FOR ASSESSMENTS AND CREATION OF LIEN AND PERSONAL OBLIGATION.** Each owner of a Homesite, by acceptance of a deed to such Homesite, with the exception of Declarant, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, hereby covenants and agrees as follows:

- a) to pay to the Association the annual assessments levied by the Association pursuant to this Declaration;
- b) to pay to the Association any special assessments and other charges which levied by the Association Pursuant to this Declaration;
- c) that there is hereby created a continuing charge and lien upon all Homesites against which such assessments are made, to secure payment of such assessments and any interest therein as provided herein and costs of collection including reasonable attorneys' fees;

- d) that such continuing charge and lien binds such Homesite in the hands of the Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Homesites whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes of other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used to purchase the Homesite, or to finance the construction, repair or alteration of Structures on the Homesite.
- e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Homesite from liability for any assessment thereafter assessed;
- f) that all annual, special and specific assessments (together with interest thereon as provided in Article IV of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Homesite owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Homesite) a personal obligation which will survive any sale or transfer of the Homesite owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

**PURPOSE OF ASSESSMENT.** The assessment levied by the Association shall be used exclusively for the administration of the community and for the common good and general welfare of the Association members, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property (including, without limitation, the maintenance and repair of all community roads), the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

**ANNUAL ASSESSMENT.** The annual assessment may be increased at any time and from time to time during each year of assessment by not more than ten percent (10%) above the annual assessment for the previous Assessment Year without a vote of the Membership.

**SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.** In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part,



the cost of any construction, reconstruction, repair or replacement of o capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

**UNIFORM RATE OF ASSESSMENT AND CONSOLIDATION OF HOMESITES.** Both annual and special assessments must be fixed at a uniform rate for all Homesites; provided, however, that no more than two (2) contiguous Homesites may be consolidated into one Homesite, for purposes of assessment, if and only if a residential structure has been constructed on any of the consolidated Homesites, and the Board has adopted a residential surcharge, which shall impose on all Homesites (as consolidated) a uniform charge in an amount to be determined by the Board.

**DECLARANTS LIABILITY FOR ASSESSMENTS.** The Declarant shall not be liable for any assessment in connection with any Homesite held for sale, unless consented to such assessment in writing.

**BUILDER HOMESITES.** Any builder on the community approved-builder list who is both the owner of a Homesite and is actively engaged in the construction of a dwelling on such Homesite shall be exempt from the payment of any assessment or pro-rated portion thereof for the 12-month period commencing with the date of the ACC plan approval.

**EFFECT OF NONPAYMENT OF ASSESSMENTS.** Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. Any unpaid facility use charge, as described elsewhere herein, shall be deemed an unpaid assessment under this Article IV with respect to any and all homesites held by the delinquent owner, and may be collected and enforced in the same manner as if such facility use charge were in fact an unpaid assessment.

**CERTIFICATE OF PAYMENT.** Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Homesite owned by said Owner as of the date of such certificate, or that all assessments, interest

and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate.

**SPECIFIC ASSESSMENTS.** The Board shall have the power to specifically assess pursuant to this Article as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Article shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Article in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Article. The Board may specifically assess Owners for expenses of the Association which benefit less than all of the Homesites, which may be specifically assessed equitably among all of the Homesites which are benefited.

#### *Article V* Architectural Control

##### **ARCHITECTURAL CONTROL COMMITTEE / CREATION AND COMPOSITION.**

An Architectural Control Committee (the ACC) shall be established consisting of not less than three (3) or more than five (5) individuals, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint and remove all members of the ACC so long as Declarant retains the right to appoint and remove any members of the Board of the Association; provided that Declarant shall have the right, but not the obligation, to appoint and remove one member of the ACC until such time as each Homesite in the community has a dwelling constructed on it. Thereafter, the Board shall appoint all members of the ACC.

**PURPOSE, POWERS AND DUTIES OF THE ACC.** The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Homesite (including landscaping) shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the Design Standards of THE SUMMIT OF FORT MOUNTAIN, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Homesite.

**BUILDER APPROVAL.** The ACC shall have the right and the responsibility to approve all building contractors employed or retained by any Homesite owner, and to impose reasonable requirements with respect to financial reliability and professional reputation. The ACC may also require a performance or other bond of the owner and / or building contractor to assure completion of improvements and / or protection and repair of community infrastructure.

**DESIGN STANDARDS.** (a) The ACC shall from time to time adopt, promulgate, amend, revoke, and enforce guidelines (the Design Standards) for the purpose of:

- i. governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
- ii. governing the procedure for such submission of plans and specifications; establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures, landscaping and site planning, and all other matters that require approval by the ACC pursuant to this Declaration; and,
- iii. assuring the conformity and harmony of external design and general quality of THE SUMMIT OF FORT MOUNTAIN.

(b) The ACC shall make a published copy of its current Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

**SUBMISSION OF PLANS AND SPECIFICATIONS.** No structure shall be commenced, erected, placed, moved onto or permitted to remain on any Homesite, nor shall any existing Structure upon any Homesite, be altered in any way which materially changes the exterior appearance of the Structure or Homesite, unless plans and specifications have been approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC, which may charge a reasonable fee for such review. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure may be included in the Development Guidelines of the ACC.

**APPROVAL OF PLANS AND SPECIFICATIONS.** Upon approval by the ACC of any plans and specifications submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the

same. Approval for use in connection with any Homesite or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Homesite or Structure. Approval of any such plans and specifications relating to any Homesite or Structure, however, shall be final as to that Homesite or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and strict compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

**DISAPPROVAL OF PLANS AND SPECIFICATIONS.** The ACC shall have the right to disapprove any plans and specifications that do not satisfy the applicable standards and requirements. In any case in which the ACC shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. Notwithstanding anything herein to the contrary, the ACC shall not disapprove any plan due to the existence of a detached garage or guesthouse unless such detached garage or guesthouse shall fail to meet the Design Standards, shall fail to conform in design or quality with the main dwelling, or shall constitute a violation of the Rules and Regulations. The ACC shall not disapprove any plan due solely to the existence of log home construction. However, the ACC may, in its discretion, disapprove log homes if the ACC shall determine that the proposed log home construction is not in harmony of external design and general quality with the existing standards of the neighborhood and with the Design Standards of THE SUMMIT OF FORT MOUNTAIN,

**OBLIGATION TO ACT.** The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after the ACC has acknowledged receipt of such plans. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

**INSPECTION RIGHTS.** Any agent of the Association or ACC may, after reasonable notice, at any reasonable time or times enter upon any Homesite and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Homesite of Structure is in compliance with the provisions of this Declaration and neither the Association nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of entry or inspection, provided such inspection is carried out in accordance with the terms in this article and within a reasonable time after construction, alteration, etc.

**VIOLATIONS.** If any Structure shall be erected, placed, maintained or altered upon any Homesite, otherwise than in accordance with plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association and the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Article VIII. Moreover, the ACC is authorized to impose a system of reasonable fines and penalties for violations by owners and / or building contractors (and their agents and employees) of this Declaration of any ACC rules and regulations or other requirements. In the event that the ACC imposed a system of fines and penalties, it shall also provide reasonable opportunity for any aggrieved party to be heard to challenge any such fines or penalties. Failure of an Owner to complete an approved Structure within twelve (12) months of approval shall constitute a violation.

#### *Article VI*

#### General Covenants and Restrictions

**APPLICATION.** The covenants and restrictions contained in this article shall pertain and apply to all Homesites and to all Structures erected or placed thereon.

**RESTRICTON OF USE.** Homesites may be used for single-family residences only and for no other purpose, including vacation rentals or similar arrangements, provided that Declarant may operate a Sales Office and / or Model Home on a Homesite or Homesites designated by Declarant.

**RULES AND REGULATIONS.** The Board may, from time to time, promulgate, establish, amend or revoke rules and regulations limiting the use of private property in order to sustain a high level of community quality and general appearance. The Rules and Regulations, as these Covenants and Restrictions, are accepted by property owners upon purchase of the property and are an obligation of property ownership and/or residency.

**RE-SUBDIVISION OF PROPERTY.** Once a Homesite has been deeded to a non-Declarant Owner, such Homesite may not thereafter be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Nothing herein shall prevent Homesite boundary lines from being changed provided that such change does not result in an increase in the number of Homesites.

**EROSION CONTROL.** Any violation of any governmental law, rule or regulation governing erosion and sedimentation shall be a violation of this Declaration. No land disturbance which may create erosion or sedimentation shall be undertaken without the ACC approval of plans for the control of such erosion or siltation. The ACC may condition its approval on the implementation of reasonable measures for preventing and controlling such erosion or siltation. No work, including clearing, grubbing or grading, shall be commenced on any Homesite unless and until all approvals have been obtained from the ACC, and the builder or Owner is ready to commence construction of the Residence.

**TREES.** Removal of trees, during construction and afterward, shall be governed by the Design Standards and/or Development Guidelines of the ACC and the Rules and Regulations. Removal of unusual plants and vegetation shall be governed by the Design Standards and/or Development Guidelines of the ACC.

**TEMPORARY BUILDINGS.** Temporary buildings, trailers, garages or buildings under construction may be used as a residence on any Homesite only as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications approved by the ACC. Except for the above use, trailers, campers, shacks, tents, garages, barns or other structures may not be used as a residence, either temporarily or permanently. No contractor or builder shall erect on any Homesite any temporary building or shed for use in connection with construction on such Homesite except as described above. This Article shall not be construed to prevent Declarant and those engaged in development, construction, marketing, property management or sales from using sheds, trailers, or other temporary structures for any of the foregoing purposes.

**SIGNS.** All signs of whatever nature, including but not limited to commercial and similar signs, shall be permitted, installed, altered or maintained on any Homesite or on any portion of a Structure visible from the exterior thereof, only according to the ACC's prior written approval of plans and specifications, except such signs as may be required by legal proceedings. This restriction shall not apply to standard, small-sized signs indicating the existence of a security system.

**SETBACKS.** In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC. No Structure shall be erected or placed on any Homesite unless its location is consistent with such setbacks.

**FENCES.** Any fences or walls of any kind shall be erected, maintained or altered on any Homesite only according to the ACC's prior written approval of plans and specifications for such fences and walls, and shall generally be approved only in cases where necessary for the construction of a home and for compliance with screening requirements for mechanical and solid waste disposal screening, or as

part of an approved site plan. Other fences or walls may be permitted where the ACC shall determine, in its discretion, that the fence or wall meets the applicable design standards and is in keeping with the general harmony and quality of the neighborhood.

**ROADS AND DRIVEWAYS.** All roads or driveways shall be constructed, modified or altered on any Homesite only according to the ACC's prior written approval of plans and specifications for such roads and driveways. Construction and materials of all roads or driveways shall be governed by the Design Standards and/or Development Guidelines.

**ANTENNAE, ETC.** All exterior television or radio antennae or satellite dishes exceeding 18" in diameter or receivers or solar equipment of any sort may be placed, allowed or maintained upon any portion of a Structure or Homesite only with the prior written approval by the ACC. No antennae shall be installed or used for the purpose of transmitting of electronic or microwave signals and no cell towers shall be permitted on any private property.

**WATER, FUEL AND OTHER STORAGE TANKS.** Any storage tanks for water, liquid propane gas or any other home fuels must be buried underground in a manner approved by the Acc and in compliance with any and all environmental regulation or shall be screened from view from any neighboring Homesite or street as permitted by the ACC.

**OCCUPANTS BOUND.** All provisions of the Declaration and Bylaws, the Rules and Regulations, and any use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners, shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against Owner.

**UTILITY LINES.** Except as may be permitted by the ACC, no overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines required during construction and lines installed by or at the request of Declarant.

**AIR-CONDITIONING UNITS.** Except as may be permitted by the ACC, no window air conditioning units may be installed, but in no event shall a window air conditioning unit be installed in any structure so as to be visible from the front of any Homesite or any adjoining street.

**EXTERIOR LIGHTING.** The original homebuilder shall provide a driveway light approved or designated by the ACC for each Homesite. In addition to the above and lighting included in an approved site plan, other exterior lighting visible from the street or neighboring property such as one (1) decorative post light, seasonal

decorative lights from Thanksgiving to January 7 of the new year, front house illumination of model homes, decorative accent lighting, and security lights affixed to the house may be permitted by the ACC in its discretion. Other lighting visible from the street or neighboring property and pole mounted lighting of a type similar to street lighting or security lighting is not permitted.

**EXTERIOR SCULPTURE, ARTIFICIAL VEGETATION AND SIMILAR ITEMS.** Exterior sculpture, fountains, flags (except for the United States flag), excessive planters, birdhouses, feeders and other outdoor ornamentation and similar items visible from the street or neighboring property must be approved by the ACC; provided, however, the display of flags for generally recognized holidays on which flags are customarily displayed shall be permitted for a period from one (1) week prior to the date of such holiday until one (1) week after the date of such holiday. Artificial vegetation shall not be permitted on the exterior of any property.

**ENERGY CONSERVATION EQUIPMENT.** Solar energy collector panels or attendant hardware or other energy conservation equipment may be constructed or installed if they are an integral and harmonious part of the architectural design of a structure and are in keeping with the general harmony and quality of the neighborhood, as determined in the sole discretion of the ACC.

**MAILBOXES.** The original homebuilder shall provide a mailbox designated or approved by the ACC for each Homesite. No other mailbox or newspaper box shall be erected or maintained on any Homesite. Replacement mailboxes must be of the same type as that installed by the original homebuilder or otherwise approved in writing by the ACC.

**EXTERIORS.** Any change to the exterior color of any improvement located on a Homesite, including, without limitation, the dwelling or any fence located on a Homesite, must be approved by the ACC.

**EXTERIOR SECURITY DEVICES.** Exterior security devices, including, without limitation, window bars, shall not be permitted on any residence or Homesite without the prior, written approval of the ACC.

**WINDOW TREATMENTS.** Foil or other reflective materials, or colors or other materials inconsistent with approved exterior colors, shall not be used on any window for sunscreens, blinds, shades or for any other purpose.

**SQUARE FOOTAGE.** No single family residential structure shall be located on any Homesite unless such structure shall have at least 1,950 square feet of heated living area. If any such structure is more than one (1) story, the first floor of such structure shall have at least 1,200 square feet of heated living area. Nothing herein shall prohibit the Declarant from departing from such square-



footage requirements in a future phase or phases of the community, provided that such modification appears on the recorded subdivision plat.

*Article VII*  
Easements, Zoning and Other Restrictions

**EASEMENTS.** (a) Declarant hereby expressly reserves to Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose that Declarant deems necessary, including, by way of example, and not limitation, the following:

- i. the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;
- ii. the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water, and heat, and for any other public or quasi-public facility, service or function, including the installation of common or community wells;
- iii. slope control purposed, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and,
- iv. the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

**EASEMENT AREA.** The words Easement Area as used herein shall mean those areas on any Homesite or any other portion of the Property with respect to which easements are shown on a recorded deed or easement agreement or on any filed or recorded map or plat relating thereto.

**ENTRY.** Declarant and its employees, agents, successors and assigns, shall have the right at all times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Article. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Homesite

in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of this Article.

**ZONING AND PRIVATE RESTRICTIONS.** None of the covenants, restrictions or easements created or imposed by Declarant shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

*Article VIII*  
Enforcement

**RIGHT OF ENFORCEMENT.** This Declaration and the Restrictions contained herein, and the Rules and Regulations promulgated hereunder, shall inure to the benefit of and shall be enforceable by (i) Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal, representatives, heirs, successors and assigns.

**RIGHT OF ABATEMENT.**

(a) Except where different notice provisions are provided elsewhere herein, in the event of a violation or breach of any Restriction contained in this Declaration or any of the Rules and Regulations, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Homesite or Structure as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Article, and with the cost thereof, including the costs of collection including reasonable attorney's fees, together with interest thereon at the lower of highest rate permitted by Law or 18% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Homesite enforceable pursuant to the provisions of Article 8.4 hereof. Such lien shall be superior to any and all charges, liens or encumbrances

which may in any manner arise or be imposed upon the Homesite after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created herein and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Homesite or Homesites (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

**SPECIFIC PERFORMANCE.** Nothing contained in this Declaration shall be deemed to affect or limit the rights of Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provision hereof.

#### **COLLECTION OF ASSESSMENTS AND ENFORCEMENT OF LIEN.**

- (a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Homesite or Homesites subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorney's fees.
- (b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Homesite or Homesites subject to the lien at auction, at the usual place for conducting sales at the Court House in Murray County, Georgia to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately proceeding such sale (but without regard to the number of days), in the paper in which the Sheriff's advertisements for Murray County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and

thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association, or assigns, shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Homesite or Homesites, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per centum of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A HOMESITE SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY, AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

NO WAIVER. The failure of Declarant, the Association, or the Owner of any Homesite, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained or any of the Rules and Regulations shall in no event be considered a waiver of the right to do so

thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

*Article IX*  
Amendment

AMENDMENTS BY DECLARANT. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Land Records of the Superior Court of Murray County, Georgia, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Homesite or of the Common Property as set forth in this Declaration, or if such amendment adversely affect the title to any Homesite, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this article shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Homesite, agrees to be bound by such amendments as are permitted by this article and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Homesite subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Homesite subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Homesites subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

AMENDMENTS BY ASSOCIATION. Amendments to this Declaration, other than those authorized in the preceding paragraph, shall be proposed and adopted in the following manner:

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

*Article X*  
Annexation

For so long a Declarant has authority to appoint and remove Directors and Officers of the Association, additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such annexation shall be accomplished by filing in the Office of the Clerk of Superior Court of Murray County an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration, or by filing an amendment to the Declaration reciting the annexation of the additional real property which is subjected to this Declaration; or by filing an amendment to the Declaration which has been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant. At the expiration of Declarant's right to appoint and remove Directors and Officers of the Association, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of

the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

Notwithstanding anything to the contrary which may be contained within this Declaration, this Declaration applies only to the Property and shall not be construed to require the annexation of other property. This Declaration shall not be construed to require the annexation of other easements or as implied covenants or as restrictive covenants or as equitable servitudes or as any other interest or claim, any property owned in part or entirely by Declarant or its principals. There is no common scheme of development of the balance of Declarant's property, and Declarant reserves the right to develop the balance of its property in any way it sees fit.

*Article XI*  
Miscellaneous

**NO REVERTER.** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility or reverter.

**SEVERABILITY.** A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

**HEADINGS.** The headings of the Articles and Articles hereof are for convenience only and shall not affect meaning or interpretation of the contents of this Declaration.

**GENDER.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

**NO LIABILITY.** Declarant shall have no liability of any kind as a result of any unenforceability of any provision herein, and each and every Owner, by acceptance of a deed conveying a Homesite, acknowledges that Declarant shall have no such liability.

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

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

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

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

(c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of damaged or destroyed property.

(d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federal Housing



Administration, their successors and assigns, for similar type residential subdivision communities.

*Article XII*  
Mortgages

The following provisions are for the benefit of holders of first mortgages on Homesites (and improvements, if any) in the Development.

NOTICES OF ACTION. Any holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number, therefore becoming an eligible holder), is entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Residence on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

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

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

(d) any proposed action which would require the consent of a specified percentage of eligible mortgages.

SPECIAL FHLMC PROVISION. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first mortgagees or at least two-thirds (2/3) of the total Members of the Association vote entitled to vote thereon consent, the Association shall not:

by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property) shall not be deemed a transfer within the meaning of this subsection;

change the method of determining the obligation, assessments, dues, or other charges which may be levied against an Owner of a Residence;

by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

fail to maintain insurance, as required by this Declaration; or,

use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**NO PRIORITY.** No provision of this Declaration, the Rules and Regulations 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 Homesite in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**NOTICE TO ASSOCIATION.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgagee of such Owner's Homesite.

**AMENDMENT BY BOARD.** Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

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

**FAILURE OF MORTGAGEE TO RESPOND.** Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a

written response from the Mortgagee within thirty (30) days of the date of the Association's request.

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

Unofficial Witness

Blavia Hild

The Summit of Fort Mountain, LLC.

By: [Signature]

Notary Public

[Signature]

