

AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
WALNUT MOUNTAIN

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1. NAME.

The name of the property is Walnut Mountain, which property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982).

2. DEFINITIONS.

Generally, terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall be defined as follows:

(a) Act means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

(b) Architectural Control Committee or ACC means the committee established to exercise the architectural review powers set forth in Paragraph 10 hereof.

(c) Area of Common Responsibility means the Common Property, together with any areas which become the Association's responsibility under this Declaration or by contract or agreement with any other Person. The office of any property manager employed by or contracting with the Association, if located on the Property, or any public rights-of-way within or adjacent to the Property, may be part of the Area of Common Responsibility.

(d) Articles or Articles of Incorporation mean the Articles of Incorporation of Walnut Mountain Property Owner's Association, Inc., filed with the Secretary of State of the State of Georgia.

(e) Association means Walnut Mountain Property Owner's Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(f) Association Legal Instruments means this Declaration and all exhibits hereto, including the Association's By-Laws, and the plats, all as may be supplemented or amended.

(g) Board or Board of Directors means the elected body responsible for management and operation of the Association.

(h) By-Laws mean the By-Laws of Walnut Mountain Property Owner's Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference.

(i) Common Property means any and all real and personal property and easements and other interests therein, together with the facilities and

improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(j) Common Expenses mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property including charges for water and other charges that otherwise benefit all Lots.

(k) Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board and the ACC.

(l) Dwelling means the residence constructed on a Lot.

(m) Effective Date means the date that this Declaration is recorded in the Gilmer County, Georgia land records.

(n) Eligible Mortgage Holder means a holder of a first mortgage secured by a Lot who has requested notice of certain items as set forth herein.

(o) Family Unit shall mean a natural person, his or her spouse, and all of their unmarried children under twenty-one (21) years of age.

(p) Lot means a portion of the Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property, or amendments or supplements thereto, recorded in the Gilmer County, Georgia land records. Lot shall include any Dwelling constructed thereon.

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

(r) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

(s) Mortgagee or Mortgage Holder means the holder of any Mortgage.

(t) Occupant means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

(u) Officer means an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.

(v) Owner means the record titleholder of a Lot, but shall not include a Mortgage Holder.

(w) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

(x) Property means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq. (Michie 1982), as may be amended.

3. LOCATION, PROPERTY DESCRIPTION, AND PLATS.

The Property subject to this Declaration and the Act is located in Gilmer County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. A plat of survey relating to the Property has been filed in Plat Book 3, Page 234, of the Gilmer County, Georgia records. The plat of survey is incorporated herein by reference as fully as if the same were set forth in their entirety herein.

4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) Membership. Every Owner shall be deemed to have a membership in the Association. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

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

5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

Except as otherwise provided herein, each Lot is hereby allocated equal liability for Common Expenses.

(a) Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots.

(b) The Board of Directors shall have the power to assess specially pursuant to this Paragraph and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Paragraph 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 do so in the future.

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

(ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot or Lots.

(c) For purposes of this subparagraph, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

#### 6. ASSOCIATION RIGHTS AND RESTRICTIONS.

The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have, :

(a) to make and to enforce reasonable rules and regulations governing the use of the Property, including the Lots and the Common Property;

(b) to enforce use restrictions, other Declaration and By-Laws provisions, and rules and regulations by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein and in Section 44-3-223 of the Act. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in an appropriate case, by an aggrieved Owner;

(c) to grant permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Property under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Property;

(d) to control, manage, operate, maintain, replace and, in the Board's discretion, alter or improve all portions of the Property for which the Association is assigned maintenance responsibility under this Declaration;

(e) to deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(f) to represent the Owners in dealing with governmental entities on matters related to the Common Property;

(g) to permanently or temporarily close access to any portion of the Common Property with, except in emergency situations, thirty (30) days prior notice to all Owners. However, except for seasonal closing of the pool and camp ground, the Owners may re-open the closed Common Property by a Majority

vote of the total Association, cast at a duly called special or annual meeting;

(h) to enter into Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot;

(i) to acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

## 7. ASSESSMENTS.

(a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots as may be authorized by the Board.

(b) Rate of Assessments. Improved Lots shall be charged an amount 1.5 times the amount charged for unimproved lots.

(i) "Improved Lot" shall mean a Lot on which a residence has been constructed and which is connectable to the water supply furnished by Association to the residences within Walnut Mountain.

(ii) "Unimproved Lot" shall mean a Lot which does not contain a residence and which is not connected to the water supply furnished by Association to the residences within Walnut Mountain. -

(c) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines imposed hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. Unless otherwise provided, annual assessments shall be due on January 1<sup>st</sup> of each year, but shall not be considered delinquent if paid in full by March 1<sup>st</sup> of each year. No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The lien provided for herein shall have priority as provided in the Act.

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

(i) If the annual assessment or any part thereof is not paid in full by March 1<sup>st</sup> of each year, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per annum or such higher rate as permitted by the Act shall accrue from the due date.

(ii) If part payment of assessments and related charges is made, the amount received shall be applied, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.

(iii) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, the Act and Georgia law and suspend the Owner's and Occupant's right to use the Common Property (provided, however, the Board may not limit ingress or egress to or from the Lot).

(iv) If any assessment or other charge is delinquent for thirty (30) days or more, in addition to all other rights provided herein and in the Act, the Association shall have the right upon ten (10) days written notice, and in compliance with any requirements set forth in the Act, to suspend any utility services paid for as a Common Expense, including, but not limited to, water, to that Lot until such time as the delinquent assessments and all costs permitted pursuant to this Paragraph, including reasonable attorney's fees, are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorney's fees, shall be an assessment against the Lot and shall be collected as provided herein for the collection of assessments.

(e) Computation of Operating Budget and Assessment. At least thirty (30) days prior to the beginning of the Association's fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Property during the coming year. The Board shall cause the budget and notice of the



assessments to be levied against each Lot for the following year to be delivered to each member at least twenty-one (21) days prior to the beginning of the Fiscal year. The assessments shall be allocated as specified in subsection (b). The budget and the assessment shall become effective unless disapproved at a duly called special meeting by a vote of a majority of the total Association membership.

Notwithstanding the above, however, if the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year, and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the By-Laws for special meetings, the new budget and assessment shall take effect without a meeting of the members.

(f) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above, the Board may at any time levy a special assessment for unexpected expenses, against all Owners, notice of which shall be sent to all Owners; provided, however, that any special assessment may not exceed fifty (\$50.00) dollars against any Lot in any one calendar year.

(g) Capital Budget and Contribution. The Board shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in subparagraph (d) of this Paragraph. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

(h) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as may be authorized under the Act, 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.

(i) Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the Board's option, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners, or added to the Association's reserve account.

8. INSURANCE.

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

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

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

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

(ii) All policies on the Common Property shall be for the benefit of the Association and its members. Any policies covering improvements on Lots shall be for the benefit of Lot Owners and their Mortgagees, as their interests may appear.

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

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

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

(vi) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

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

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

(3) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;

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

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

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

(d) In addition to the other insurance required by this Paragraph, the Board shall obtain workmen's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds or dishonesty insurance. The amount of fidelity coverage or dishonesty insurance shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Mortgage Corporation or the Federal National Mortgage Association.

(e) Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry blanket all-risk Property insurance, if reasonably available, or if not reasonably available,

fire and extended coverage, on his or her Lot and structures constructed thereon meeting the same requirements as set forth in subparagraphs (a) and (c) of this Paragraph for insurance on the Common Property. Each Owner further covenants and agrees that in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Paragraph 9 of this Declaration, unless a determination not to rebuild is made in accordance with Paragraph 9 hereof. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

9. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Common Property as a result of fire or other casualty, unless eighty (80%) percent of the Lot Owners, Lots, vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

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

(g) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Paragraph 7(f) above. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(h) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Property was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board.

(i) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners, if any, on account of such casualty shall

constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

(j) Damage to or Destruction of Dwellings on Lots. In the event of damage to or destruction of structures on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Paragraph 10 of this Declaration, unless a determination not to rebuild is made by the Lot Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

#### 10. ARCHITECTURAL CONTROLS.

(a) Except as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining the written approval of the Architectural Control Committee ("ACC"),:

(i) make any encroachment onto the Common Property,

(ii) perform grading to or construct any dwelling on a Lot or other improvement on a Lot,

(iii) make any exterior change, alteration or construction on a Lot (including outdoor lighting, painting, regrading or significant landscaping modifications), or

(iv) erect, place or post any object, sign, clothesline, exterior sculpture, fountains, or other thing on the exterior of the Lot, on the dwelling on the Lot, or on any Common Property.

The standard for approval of such improvements shall include, but not be limited to: (1) aesthetic consideration, (2) materials to be used, (3) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the Board or ACC, (4) harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography, and (5) any other matter deemed to be relevant or appropriate by the Board or ACC.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any

construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property alterations or additions.

The ACC or the Board, subject to this subparagraph (a), may allow such encroachments on the Common Property as it deems acceptable.

If the ACC or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this subparagraph (a) will be deemed complied with; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the By-Laws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

(b) Architectural Control Committee. The Architectural Control Committee shall constitute a standing committee of the Association. The ACC shall consist of the Board unless the Board delegates to other Persons the authority to serve on the ACC. At all times, however, the chairperson of the ACC shall be a Board member. The ACC shall have the authority to require an Owner to employ professional consultants to provide the ACC with information to assist it in the approval of any plans. Said owner shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards.

(c) Limitation of Liability. Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any Lot.

(d) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(e) Enforcement. Any construction, alteration, or other work done in violation of this Paragraph, the Declaration, the By-Laws or the design standards shall be deemed to be nonconforming. Upon written request from the

Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the benefited Lot.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the ACC.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remains on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction. Furthermore, the Board shall have the authority to record in the Gilmer County land records notices of violation of the provisions of this Paragraph.

(f) Appeal. If the ACC or its designated representative disapproves any application or part thereof for the construction of an original dwelling on a Lot (including any landscaping, accessory structures, or other improvements associated with the original construction), the Property Owner shall have the right to appeal the decision to the Board. The Board shall schedule a hearing within thirty (30) days of receiving written notice requesting an appeal from the Property Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Property Owner or the ACC, including the decision of the ACC and the application of the Property Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Property Owner. If the Board does not receive written notice by certified mail requesting an appeal within thirty (30) days from the date of the ACC's notice to the Property Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.

Approval of Builders by ACC. Any builder must, before beginning construction on any lot, be approved by the ACC as to financial stability, history of compliance, if applicable, with the Declaration in performing other construction work at Walnut Mountain, building experience, ability to build houses or other structures of the class and type approved by the ACC for such lot, and such other factors as may be determined by the Board or ACC to be reflective of the builder's quality or ability. Financial data, as deemed necessary to the ACC, must be submitted to the ACC. As a prerequisite to approval, the ACC may require the builder or Property Owner to post a cash bond in the amount of three thousand (\$3,000) dollars, against which Walnut Mountain Property Owners Association, Inc. may draw funds to complete any approved dwelling or other exterior improvements which are not completed

within the required time period hereunder, and correct any construction-related damages on any lot or the Common Properties caused by, and/or fines incurred by, such Property Owner, or his or her licensees or invitees. Any excess shall be returned to the Property Owner within thirty (30) days of completion of construction and final certification by the ACC of compliance with the ACC's standards. If damages and/or fines exceed \$3,000, such excess shall be assessed against the Property Owner and become a lien against the Property Owner's lot.

(g) All costs thereof against the Property Owner and lien against the Property Owner's lot. Each builder performing any work within Walnut Mountain shall be responsible and liable to Walnut Mountain Property Owners Association, Inc., for its actions and actions of its agents, subcontractors and employees within Walnut Mountain. Each such builder shall ensure full compliance, by its agents, subcontractors and employees, with this Declaration and all rules, regulations or guidelines of Walnut Mountain Property Owners, Inc.

(h) Commencement of Construction. All improvements approved by the ACC hereunder must be commenced within one year from the date of approval. If not commenced within one year from the date of such approval, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, the construction of a house must be completed within twelve (12) months from the date the construction is commenced.

(i) Impact Fee. The ACC may require that the Property Owner, prior to commencing or engaging in any grading of a Lot or any new home construction activity for which approval of the ACC is required, obtain an impact permit from Walnut Mountain Property Owners Association, Inc. and pay a non-refundable impact fee based on rules and regulations it establishes not to exceed \$3,000.

The impact fee may be increased by the Board on an annual basis in an amount not greater than the percentage increase (rounded up to the nearest dollar) in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor statistics of the United States Department of Labor.

(j) Water Tap-On Fee. Except with the express written permission of ACC first had and obtained, no water well shall be sunk or drilled on any lot. Further, a tap-on fee of \$ 375.00 will be charged by Association on a per Lot basis before any Property Owner thereof shall be entitled to tap-on to any water supply furnished by Association to the residents within WALNUT MOUNTAIN.

(k) General Provisions

(i) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any lot except for the purpose of construction on such lot and shall not be stored on such lot for longer than



that length of time reasonably necessary for the construction in which same is to be used.

(ii) No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance, except that such tanks may be placed aboveground provided they are kept in a screened enclosure which must be compatible in appearance and locale on to the previously constructed house. Any such screened enclosure must exceed in height by at least one (1) foot any such tank as may be placed therein.

(iii) No trees, shrubs, bushes or other vegetation having a diameter of four inches or more shall be cut, destroyed or mutilated except with the express written permission of Association first had and obtained; provided, however, that dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any lot by the Property Owner thereof after such dead or diseased condition is first brought to the attention of Association and permission for such cutting and removal has been obtained.

#### 11. USE RESTRICTIONS.

Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of this Declaration, the By-Laws and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

Use restrictions regarding use of Lots and the Common Property are as follows and also as may be adopted by the Board in accordance with the terms hereof and as specified in the By-Laws.

##### (a) Use of Lots.

Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within the dwelling so long as:

(1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the dwelling;

(2) the business activity does not involve visitation of the dwelling by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential dwelling without business activity;

(3) the business activity conforms to all zoning requirements for the Property;

(4) the business activity does not increase traffic in the Property in excess of what would normally be expected for residential dwellings in the Property without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

(5) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(6) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as determined in Board's discretion; and

(7) the business activity does not result in a materially greater use of common area facilities or Association services.

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: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

(b) Subdivision of Lots and Outbuildings. No Lot may be subdivided into a smaller Lot except with the express written consent of the Board of Directors. No structure of a temporary character, trailer, tent, shack, shall be permitted on any Lot; provided, however, temporary buildings and the like shall be permitted for construction purposes during the construction period of a house. No garage, outbuildings or other appurtenant structures shall be used for residential purposes.

(c) Use of Common Property. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written Board consent, except as specifically provided herein.

With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Property hereunder 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 Property and all liability for any damage or injury to any person or thing as a result of such use. The Association 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 Association, its agents or employees.

(d) Prohibition of Damage, Nuisance and Noise. Without prior written Board consent, nothing shall be done or kept on the Property or any part thereof which would increase the rate of insurance on the Property or any Lot or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive or offensive activity shall not be carried on upon the Property. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, nuisance or annoyance to other Owners or Occupants. No Owner or Occupant of a Lot may use or allow the use of the Lot or any portion of the Property in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or Occupants of a portion of the Property, or in such a way as to constitute, in the Board's sole opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. No Owner or Occupant of a Lot may use or allow the use of the Lot or the Common Property in any manner which creates disturbing noises between the hours of 9:00 p.m. and 7:30 a.m. Sunday through Thursday and 11:00 p.m. to 7:30 a.m. Friday and Saturday that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of the other Owners or Occupants.

No Owner shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Property or any structure created thereon, would reduce the value thereof, or would impair any easement or hereditaments thereto, without prior written consent of all Association members and their Mortgagees. No damage to or waste of the Common Property, or any part thereof, or of the exterior of any building constructed upon any Lot shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

(e) Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Property is prohibited; provided, however, that the display of lawful firearms on the Common Property is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25-10-1. Notwithstanding this provision, "B-B" gun and pellet guns may be fired on Lots.

(f) Pets. No Owner or Occupant may keep any pets other than a reasonable number of generally recognized domestic household pets on any portion of the Property, as determined in the Board's discretion.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Dogs may not be left unattended. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Property without prior written Board approval as provided

in Paragraph 10 hereof. Dogs must be kept on a leash or be under the physical control of a responsible person at all times while outdoors.

(g) Abandoned Personal Property. Personal property, other than an automobile as provided for in subparagraph (g) of this Paragraph, is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's dwelling, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

(h) Signs. Except for reasonable name and address signs or as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee.

(i) Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Containers for garbage or other refuse shall be underground or in a screened sanitary enclosure which must be compatible in appearance and location to a house.

(j) Impairment of Dwellings and Easements. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditaments, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

(k) Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling.

(1) Antennas and Satellite Dishes. No transmission antenna, of any kind, may be erected anywhere on the Community without written approval of the Board of Directors or the Architectural Control Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Community, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Except as provided by this Section, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Community, whether attached to a home or structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

12. LEASING.

General Provisions. The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and By-Laws, in order to enforce the provisions of this Paragraph.

(a) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

(b) Leasing Provisions. Leasing of Dwellings shall be governed by the following provisions:

(i) General. Dwellings may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval.

(ii) Compliance With Declaration, By-Laws, and Rules and Regulations, Use of Common Property, and Liability for Assessments. Any lease of a Dwelling shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a Dwelling, covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot:

(1) Compliance With Declaration, By-Laws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Dwelling in order to ensure compliance with the foregoing. The Owner shall cause all Occupants of his or her Dwelling to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Dwelling are fully liable and may be sanctioned for any violation of the

Declaration, By-Laws, and rules and regulations adopted pursuant thereto. In the event that the lessee, or a person living with the lessee, violates the Declaration, By-Laws, or a rule or regulation for which a fine is imposed, notice of such violation shall be given to the Owner in accordance with Article V, Section 2 of the By-Laws. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, By-Laws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any person living with the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specifically assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(2) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

(c) Applicability of this Paragraph 12. Leases existing on the date this Declaration is recorded in the Gilmer County land records shall not be subject to the terms of subparagraph (b) above. Such leases may continue in accordance with the terms of the Original Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Paragraph. Any Owner of a Dwelling which is leased on the date this Declaration is recorded in the Gilmer County land records shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Declaration is recorded in the Gilmer County, Georgia land records.

This Paragraph 12 shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

### 13. SALE OF LOTS.

A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may

reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of a Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

14. MAINTENANCE RESPONSIBILITY.

(a) Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve more than one (1) Lot, whether located within or without the Lot's boundaries to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

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

(b) Owner's Responsibility. Except as provided in subparagraph (a) above, all maintenance of the Lot shall be the responsibility of the Owner thereof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the Lot, whether located within or without a Lot's boundaries (including all, electricity, and water) commencing from the meter on to the Lot. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard established pursuant hereto. Any maintenance which involves an exterior change, including, without limitation, repainting of the exterior of improvements in a different color or installation of exterior lighting, shall require prior approval of the Board or its designee pursuant to Paragraph 10 of this Declaration.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Property) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

Each Owner shall also be obligated:

(i) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots.

(ii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

(iii) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Lot Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Lot Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Lot Owner's next chargeable assessment.

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association.

In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board.

(c) Failure to Maintain. If the Board determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists, the Owner shall have fourteen (14) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within fourteen (14) days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be an assessment and lien against the Owner and the Lot.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Lot, which shall become a lien against the Lot and shall be collected as provided herein for the collection of assessments.

(d) Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.



15. MORTGAGEE'S RIGHTS.

(a) Unless at least two-thirds (2/3) of the first Mortgagees or Lot Owners give their consent, the Association shall not:

(i) by act or omission seek to abandon or terminate the Property or the Association;

(ii) change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) partition or subdivide any Lot;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or rights-of-way for public purposes and the granting other easements for the benefit of the Association shall not be deemed a transfer within the meaning of this clause); or

(v) use hazard insurance proceeds for losses to the Common Property for other than the repair, replacement, or reconstruction of the Common Property.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required by the Association Legal Instruments for any of the actions contained in this Paragraph.

(b) Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

(i) any condemnation loss or any casualty loss which affects a material portion of the Common Property;

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

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

(iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

(e) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 12 and 13 governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

#### 16. GENERAL PROVISIONS.

(a) Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

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

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

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

(e) Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

17. EMINENT DOMAIN.

Whenever all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five (75%) percent of the Owners shall otherwise agree; the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Paragraph 9, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

18. EASEMENTS.

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

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at

certain designated times by an Owner, his or her family, tenants, guests, and invitees;

(ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities in the Property for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations;

(iii) the right of the Association to borrow money as may be set forth in the By-Laws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property.); and

(iv) the right of the Association to grant permits, licenses or easements across the Common Property, as authorized in this Declaration or the By-Laws; and

(v) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association.

(b) Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, water, telephone and electricity, as well as storm drainage and any other service. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

(c) Easement for Entry. The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may

increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board.

19. AMENDMENTS.

Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Gilmer County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

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

Any action to challenge the validity of an amendment adopted under this Paragraph must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

20. SEVERABILITY.

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

21. DURATION.

The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

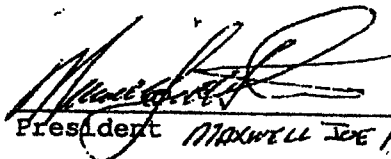
22. PREPARER.

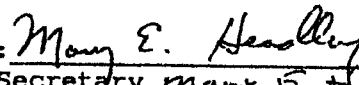
This Declaration was prepared by George E. Nowack, Jr. Weissman, Nowack, Curry & Wilco, P.C., 1349 West Peachtree Street, 15th Floor, Atlanta, Georgia 30309.

IN WITNESS WHEREOF, the undersigned officers of Walnut Mountain Property Owner's Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original By-Laws were duly adopted by the required majority of the Association and its memberships as further evidenced by their signatures attached hereto.

This 25th day of SEPTEMBER, 2000.

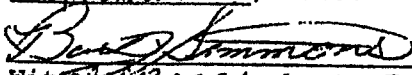
WALNUT MOUNTAIN PROPERTY OWNER'S ASSOCIATION, INC.

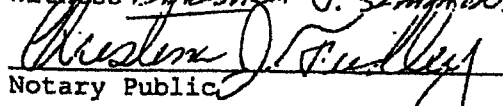
By:  [SEAL]  
President MAXWELL JOE HOLSTEIN

Attest:  [SEAL]  
Secretary MARY E. HEADLEY

[CORPORATE SEAL]

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

  
Witness BARBARA J. SIMMONS

  
Notary Public

My Commission Expires:

**CHRISTINA J. FRIDLEY**  
Notary Public, State of Georgia  
Qualified in Glimmer County  
[NOTARY SEAL] My Commission Expires  
**February 28, 2004**