

STATE OF GEORGIA  
COUNTY OF GILMER

Return to: Weissman, Nowack, Curry, & Wilco, P. C.  
One Alliance Center, 4<sup>th</sup> Floor  
500 Lenox Road  
Atlanta, Georgia 30326  
Attention: George E. Nowack, Jr.

Cross Reference: Deed Book: 354  
Page: 298  
Deed Book: 1844  
Page: 273

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(SPACE ABOVE RESERVED FOR RECORDING DATA)

**SECOND AMENDED & RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHITESTONE LAKE ESTATES PROPERTY  
OWNERS ASSOCIATION, INC.**

This Second Amended & Restated Declaration of Covenants, Conditions, and Restrictions ("Declaration") is made on the date hereinafter set forth by Whitestone Lake Estates property Owners, Inc. ("Association").

**WITNESSETH:**

WHEREAS, Kiker-Roach Enterprises, recorded that certain Declaration of Protective Covenants for Whitestone Lake Estates at Deed Book 354, Page 298 ("Original Declaration").

WHEREAS, the Amended and Restated Declaration provides for amendment by written agreement of at least two-thirds of the Whitestone Lake Estates Lot Owners ("Owners");

WHEREAS, at least two thirds of the Lot Owners agreed in writing to this Second Amended and Restated Declaration, as affirmed to by the attached signature of the Association President, and attested to by the Association Secretary;

WHEREAS, the Original Declaration was restated in its entirety and recorded on December \_\_19<sup>th</sup>, 2013\_\_ in Deed Book\_\_1844\_\_ Page\_\_273-319\_\_ of the Gilmer County land records ("Restated Declaration").

WHEREAS, the Restated Declaration was stricken in its entirety and replaced with an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Whitestone Lake Estates Property Owners Association, Inc. ("Amended and Restated Declaration") on December 19, 2013 in Deed Book 1844, Page 273 of the Gilmer County land records;

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THE PROPERTY IS SUBJECT TO THE PROVISIONS OF THE GEORGIS PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTIONS 44-3-22-, ET. SEQ. CLOSING ATTORNEYS AND THE EXAMINERS MUST CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS/CHARGES DUE ON LOTS.

WHEREAS, the Amended and Restated Declaration submitted the property to the Georgia Property Owners Association Act O.C.G.A. 44-3-22 et seq.

NOW, THEREFORE, the Amended and Restated Declaration is stricken in its entirety (except as to the provisions incorporated by reference in Article II of this Restated Declaration) and the following is simultaneously substituted therefore:

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**EXHIBITS**

**DESCRIPTION OF SUBMITTED PROPERTY..... "A"**

**ARTICLE 1. NAME**

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The name of the Subdivision is Whitestone Lake Estates, which is a residential property owners' development subject to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

**ARTICLE 2. DEFINITIONS**

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Unless the context otherwise requires, capitalized terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall be defined as set forth in this Paragraph 2. Otherwise, the 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.

**Section 2.1. Act** means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, *et seq.* (Michie 1982), as may be amended.

**Section 2.2. Architectural Control Committee or ACC** shall mean the committee established to exercise the Architectural Review powers set forth in Article 11 hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee.

**Section 2.3. Area of Common Responsibility** means the Common Property, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the maintenance responsibility of the Association.

**Section 2.4. Articles or Articles of Incorporation** shall mean the Articles of Incorporation of Whitestone Lake Estates Property Owners Association, Inc. filed with the Secretary of State of the State of Georgia.

**Section 2.5. Assessments** shall mean the sum charged to Lot Owners to be used for any purpose the Association determines will benefit the Owners, which includes, but is not limited to Common Expenses for the management of the affairs of the Association and insurance as provided herein, as well as the establishment and maintenance of a reasonable operating or reserve fund to cover unforeseen contingencies or deficiencies.

**Section 2.6. Association** shall mean Whitestone Lake Estates Property Owners Association, Inc., a Georgia non-profit corporation, its successors and assigns.

**Section 2.7. Association Legal Documents** means this Declaration and all exhibits hereto, the By-Laws, the Articles of Incorporation, the plats and all rules and regulations and architectural guidelines for the Association, all as may be supplemented or amended.

**Section 2.8. Board or Board of Directors** shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

**Section 2.9. Bylaws** shall mean the Bylaws of Whitestone Lake Estates Property Owners Association, Inc.

**Section 2.10. Common Expenses** means the expenses incurred or anticipated to be incurred for the general benefit of all Lots, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Property. Examples of Common Expenses include, but are not limited to, the costs to maintain the roads, gate, fence, lake, walls, and Common Element landscaping.

**Section 2.11. 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.

**Section 2.12. Declaration** means this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Whitestone Lake Estates Property Owners Association, Inc.

**Section 2.13. Director** means a member of the Association's Board of Directors.

**Section 2.14. Domestic Partner** means any adult who cohabitates with an Owner, and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's Secretary. A person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.

**Section 2.15. Dwelling** shall mean any building situated on a Lot designated and intended for use and occupancy as a single-family residential home.

**Section 2.16. Effective Date** shall mean the date that this Declaration is recorded in the Official Records.

**Section 2.17. Lot** shall mean any plot of land in the Subdivision, whether or not improvements are constructed thereon, which constitutes a Dwelling site as shown on the Plats. Each Lot consists of a Lot and all improvements thereon, including but not limited to, a Dwelling, driveways and garages. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

**Section 2.18. Mortgage** shall mean any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

**Section 2.19. Mortgagee or Mortgage Holder** shall mean the holder of a Mortgage.

**Section 2.20. Occupant or Corporate Occupant** means any person staying overnight in a Dwelling for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year.

**Section 2.21. Official Records** shall mean the official land records of the Clerk of the Superior Court of Gilmer County, Georgia.

**Section 2.22. Owner(s)/Lot Owners(s)** means the record title holder(s) of a Lot, but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Lot shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Lot.

**Section 2.23. Person** shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

**Section 2.24. Plats** mean those plats of the survey relating to the Subdivision filed in the Gilmer County, Georgia land records, and any amendments or supplements thereto. All of the Plats of survey are incorporated herein by this reference.

**Section 2.25. Subdivision** means that real estate which is subject to the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference.



**Section 2.26. Subdivision Wide Standards and Design Guidelines** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Subdivision as well as those specific requirements applicable to the initial construction, modification, or removal of a Dwelling. Such standard may be more specifically determined by the Board and the ACC.

**Section 2.27. Total Association Vote** shall mean all of the eligible votes attributable to members of the Association as of the record date for such action.

**Section 2.28. Violator** means any Owner who violates any provision of the Association Legal Documents and any Owner's family member, guest or Occupant or Domestic Partner who violates such provisions; provided, however, if an Owner's family member, guest or Occupant violates the Association Legal Documents, the Owner of the relevant Lot also shall be considered a Violator.

**ARTICLE 3. PROPERTY SUBJECT TO THIS DECLARATION AND GEORGIA  
PROPERTY OWNERS ASSOCIATION ACT OF COMMON PROPERTY**

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**Section 3.1. Submitted Property.** The real property in the Subdivision subject to this Declaration and the Act is located in Gilmer County, Georgia, being recorded on the plat(s) recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ of the Gilmer County land records which Plat(s) is incorporated by reference.

**Section 3.2. Subject to Georgia Property Owners Association Act.** The property in the Subdivision was submitted to the Georgia Property Owners Association Act ("Act") by the Amended and Restated Declaration.

**Section 3.3. Partition of Common Property.** The Common Property shall remain undivided, and no Owner or any other Person, shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Subdivision.

**ARTICLE 4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

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**Section 4.1. Membership.** The Association shall have one class of membership. Each Lot Owner shall be a member of the Association. This does not include persons who hold an interest merely as security for the performance of an obligation. The giving of a security interest shall not terminate an Owner's membership. No Lot Owner, whether one or more Persons, shall have more than one membership per Lot owned in the Subdivision.

**Section 4.2. Voting.** The Owner(s) of each Lot shall be entitled to one equally weighted vote for each Lot, which vote may be exercised and suspended as provided in this Declaration and the By-Laws. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one (1) Owner of a Lot attempts to cast it. In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent or representative of legal entity shall be eligible to represent such entity or entities in the affairs of the Association, including, without limitation, voting and serving on the Board of Directors of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with the Bylaws.

## **ARTICLE 5. ADMINISTRATION OF THE SUBDIVISION**

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**Section 5.1. Association Rights and Obligations.** The administration of the Subdivision, the maintenance, repair, renovation, and operation of the Common Property and those acts required of the Association by this Declaration shall be the responsibility of the Association, and such administration shall be pursuant to the provisions of this Declaration and the By-Laws and Articles of Incorporation of the Association. The powers herein or elsewhere granted to the Association may be exercised by the Board of Directors, acting through officers, without any further consent or action on the part of the owners unless otherwise specifically provided herein. Notwithstanding the duty of the Association to maintain, repair, renovate, and operate the Common Property, the Association shall not be liable for injury or damage caused by any condition of the Common Property nor for injury caused by the elements, owners or other persons, nor shall any officer or director of the Association be liable to any owner for injury or damage caused by such officer or director in the performance of his duties unless due to the gross misfeasance or malfeasance of such officer or director.

### **Section 5.2. Powers of the Association.**

Unless otherwise provided, the Association, acting through its Board of Directors, shall have the right and authority to take all actions permitted by this Declaration, the Bylaws, the Act and the Georgia Nonprofit Corporate Code.

## **ARTICLE 6. ALLOCATION OF LIABILITY FOR COMMON EXPENSES AND EXPENSES**

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**Section 6.1. General Allocations.** Except as provided below, or elsewhere in the Act or the Association Legal Documents, the amount of all Common Expenses shall be assessed against all the Lots equally.

**Section 6.2. Power to Impose.** The Association shall have the power to levy assessments as provided herein and in the Act. Assessments shall be used for any purpose the Association determines will benefit the Owners or the Subdivision.

**Section 6.3. Creation of the Lien and Personal Obligation For Assessments.** Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for each Lot owned all assessments and other charges levied pursuant to this Declaration and the By-Laws.

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

Assessments shall be paid in such manner and on such dates as determined by the Association. Unless otherwise approved by the Members, the annual assessment shall be due on April 1st. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

**Section 6.4. Computation of Operating Budget and Assessment.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association

during the coming year, which shall include the amount of the annual assessment, and may also include a contribution to a long-term maintenance, repair and replacement reserve account in accordance with a capital budget separately prepared. Annual assessments shall be applied on a uniform and equal basis for each Lot. The Board shall send a copy of the budget and the assessment to be levied against each Lot for the following year via U.S. mail or electronic mail to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective if approved by a majority of the Total Association Vote within 30 days from the mailing of the budget and assessment amount via the procedure for approval of action without meeting contained in §14-3-704 of the Georgia Nonprofit Corporation Act. Notwithstanding the foregoing, however, in the event the membership does not approve the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

**Section 6.5. Special Assessments.** In addition to all other assessments and charges provided for herein, the Association may levy special assessments against all Owners for any purpose from time to time; provided, however, that such special assessment must first be approved by at least two-thirds (2/3rds) of the Total Association Vote cast by written ballot in lieu of a meeting pursuant to the By-Laws, or at least two-thirds (2/3rds) of the Total Association Vote represented in person or by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting.

**Section 6.6. Specific Assessments.** Notwithstanding the above, the Board of Directors shall have the power but shall not be obligated to levy specific assessments pursuant to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Specific assessments shall include, but not be limited to, fines levied pursuant to this Declaration, the costs of maintenance performed by the Association for which the Owner is responsible under Section 12.3 and Section 12.4 of this Declaration, and the Foreclosure Administration Fee.

**Section 6.7. Delinquent Assessments.** All assessments and charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and charges, the Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner's debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within 15 days of the due date, or such later date as may be provided by the Board of Directors:

(a) a late charge equal to the greater of \$10.00 or 10% of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner;

(b) interest at the rate of 10% per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date;

(c) if paid in installments, the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing. If the Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any annual or special assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and

(d) A notice of statutory lien may be filed in the Gilmer County land records.

(e) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law.

If assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Common Property are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing;

provided, however, the Board may not deny ingress or egress to or from a Lot.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner, and no diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorneys' fees, costs and expenses, then to costs and attorneys' fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

**Section 6.8. Foreclosure Administration Fee.** It is recognized that foreclosures of mortgages on Lots create substantial administrative and other burdens on the Association. These additional burdens on the Association include, but are not limited to, having to monitor the status of mortgages and legal periodicals to determine when foreclosures occur, searching the Gilmer County, Georgia land records to determine the names of the purchasers at foreclosure sales, contacting the foreclosure purchasers/owners regarding foreclosure-purchaser responsibilities and assessment obligations and updating Association records multiple times to deal with just a single Lot. Pursuant to this Declaration and Section 44-3-225(a) of the Act, the Association is authorized to assess individual Owners certain fees and expenses occasioned by and benefiting just those Owners or those Owners' Lots. In accordance with these provisions, and in addition to annual assessments, special assessments, and other charges provided for in this Declaration, any person who acquires a Lot at a foreclosure sale of the mortgage on such Lot, or by deed in lieu of a foreclosure, will be required to pay the Association a Foreclosure Administration Fee of \$1,000.00 at the time the foreclosure deed or deed in lieu of foreclosure is recorded in the Gilmer County, Georgia records. The Foreclosure Administration Fee shall constitute a specific assessment as described in this Declaration.

**Section 6.9. 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 and charges due and unpaid, including but not limited to any late charges, interest, fines, attorneys' fees or other charges against such Lot. The Association shall respond in writing within five business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any Mortgage on such Lot.

**Section 6.10 Assignment of Rents.** When an Owner who is leasing a Lot fails to pay any assessment or any other charge against the Lot for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon demand by the Board, lessee shall pay to the Association all unpaid assessments and other charges payable during the remaining term of the lease and any other period of occupancy by the lessee; provided that lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request.

All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If the lessee fails to comply with the Board's demand to pay assessments or other charges to the Association, lessee shall be personally obligated to pay to the Association all amounts authorized under the Declaration as if the lessee were the Owner. The above

provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.

**Section 6.11 Transfer Fee.** Each time a Lot is sold, or title is otherwise transferred to another party (other than to the Owner's spouse, through inheritance; or by foreclosure), the Association may charge an initiation fee in an amount equal to the then current annual assessment, which may change from year to year. This fee shall be charged to any purchaser or transferee of a Lot. This fee is in addition to the annual assessment. This fee shall not be considered an advance upon the payment of the annual assessment. A delinquent initiation fee may be collected in the same manner as other assessments, including the filing of a notice of statutory lien.

## **ARTICLE 7. INSURANCE AND CASUALTY LOSSES**

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**Section 7.1. Property Insurance.** The Board of Directors shall obtain property insurance for all insurable improvements on the Common Property or required to be maintained by the Association. This insurance shall include, at a minimum, coverage for fire, wind, storm, hail, vandalism, malicious mischief and civil commotion and shall be in an amount sufficient to cover the full replacement cost of such insurable improvements. Alternatively, the Board may purchase "special form" coverage in like amounts.

**Section 7.2. Association Liability Insurance.** 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, with a combined single limit of at least \$1,000,000.00.

**Section 7.3. Directors' and Officers' Liability Insurance.** The Board shall obtain a Directors and Officers liability insurance policy with a limit of at least \$1,000,000.00.

**Section 7.4. Additional Association Insurance.** The Board may obtain such additional insurance as it deems appropriate.

**Section 7.5. Premiums and Deductibles on Association Policies.** Premiums for all Association insurance shall be a Common Expense. The policies may contain reasonable deductibles. Deductibles shall not be subtracted from the face amount of the policies in determining whether the insurance equals the full replacement cost of the insurable improvements.

**Section 7.6. Insurance on Lot and Dwelling.** Each Owner is solely responsible for obtaining insurance on a Lot and Dwelling.

## **ARTICLE 8. DAMAGE AND DESTRUCTION**

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**Section 8.1. In General.** 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 of Directors 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 Article, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

**Section 8.2. Repair and Construction.** Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote 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 sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(a) **Insurance Proceeds Insufficient to Fund Repairs and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, with the necessity of a majority of the Total Association Vote, levy a special assessment against the Owners of all Lots. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

(b) **Insurance Proceeds Greater Than Cost of Repair and 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 allocated to the reserve fund.

(c) **Disposition of Property Upon Determination not to Repair or Reconstruct.** In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be maintained as an undeveloped portion of the Subdivision by the Association in a neat and attractive condition.

**Section 8.3. Damage to Dwelling.** All damage to a Dwelling shall be repaired or replaced within 6 months of the casualty, unless otherwise permitted by the Board or ACC. In the event it is decided the Dwelling will not be repaired or replaced, the Lot Owner shall remove all portions of the Dwelling, fill in the foundation and landscape the Lot in accordance with a plan submitted to and approved in writing by the Board or ACC.

## **ARTICLE 9. CONDEMNATION**

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Whenever any Common Property is taken by, or conveyed in lieu of condemnation to, any authority having condemnation or eminent domain power, the Board of Directors shall give notice thereof to each Owner. If any structure on the Common Property is so taken or conveyed, the Board shall arrange for and supervise the prompt reconstruction of such structure, to the extent sufficient Common Property is available, with such improvements or modifications it deems appropriate, unless 80% of the Owners vote not to do so.

If proceeds from the condemning authority are not sufficient to defray the Board's estimated or actual costs of reconstruction, including, but not limited to, any professional fees and premiums for construction bonds the Board deems necessary, the Board may levy a special assessment against all Owners with the necessity of a majority of the Total Association Vote or compliance with any other requirements for approval of special assessments in this Declaration. Any surplus funds remaining after the reconstruction is completed shall be common funds of the Association to be used as determined by the Board.

## **ARTICLE 10. ARCHITECTURAL STANDARDS**

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**Section 10.1. Standards and Interpretation.** The Board may establish, amend, and publish written Subdivision Wide Standards and Design Guidelines for the construction of a Dwelling, for the installation and maintenance of landscaping, for the maintenance of and repair or modifications to a Dwelling or Lot that affect the exterior appearance thereof, and for the removal of a Dwelling.

**Section 10.2. Architectural Control Committee.** The Architectural Control Committee ("ACC") shall constitute a standing committee of the Board. The ACC shall consist of the Board of Directors unless the Board of Directors delegates to other Persons the authority to serve on the ACC. At least a majority of the members of the ACC shall be residents of the Subdivision.

**Section 10.3. Action Requiring ACC Approval.** Except as otherwise provided herein, prior written approval of the Board or ACC is required for the following:

- (a) Any site work, including but not limited to, staking, clearing and grading a Lot;
- (b) The construction of any Dwelling or other improvement on a Lot, including without limitation landscape, hardscape, garages, and driveways;
- (c) The demolition in whole or in part of a Dwelling or other improvement on a Lot;
- (d) Any change or alteration to a Lot or Dwelling that affects the exterior appearance of the Dwelling or Lot, including but not limited to (1) changes to the exterior color of a Dwelling or outbuilding, (2) changes to the shape of or materials on the exterior of a Dwelling or outbuilding, (3) changes to the placement or surface of a driveway, or (4) significant changes in landscaping visible from any street;
- (e) The erection, placement or posting of any object or thing on the Lot, during construction of a new Dwelling or thereafter, that affects the exterior appearance of the Lot, including but not limited to, fences, gates, columns, walls, pools, exterior lighting (including landscape lighting), statuary, bird baths, wagons, fountains, decorative boulders, awnings, shutters, patio covers, decks, gazebos, hot tubs and basketball goals.

**Section 10.4. Application Process, Review and Appeal.** The Board may establish procedures, forms, conditions and requirements for the submission of applications for new construction of a Dwelling or for modifications to a Dwelling or a Lot that affect the exterior appearance thereof. Such applications shall be in writing and, unless otherwise provided by the Board, submitted to the ACC. If the application requests any variance from provisions of this Declaration or any published Subdivision-Wide Standards and Guidelines related to the exterior appearance of the Lot or Dwelling, the Owner must expressly identify such variance in the application. No approval issued hereunder shall authorize such a variance unless that variance is expressly identified in the application and specifically approved in writing by the Board.

The standards for approval of such construction or modifications shall include, but not be limited to: (1) aesthetic considerations; (2) materials to be used; (3) compliance with this Declaration and the Subdivision Wide Standards and Design Guidelines which may be established by the Board; (4) harmony with the external design of the existing Dwellings, 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. The Board or ACC shall approve any application that it determines to be in substantial compliance with such standards for approval.

**Section 10.5. Ruling on Application.** If the Board or ACC fails to approve or to disapprove such application within 60 days after the application and all required information have been submitted, the Owner submitting the application may issue written notice, via certified mail, to the Association President, informing the President of the Owner's intent to proceed with the construction or modification as identified in the application. Unless the Association issues a written disapproval of the application within 10 days of receipt of the Owner's notice, the approval will not be required and this Paragraph will be deemed complied with as to the items specifically identified in the application. However, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any modification to a Lot or Dwelling that is otherwise in violation of the Association Legal Documents, or of any applicable zoning or other laws. Except as provided in this subparagraph, no approval of a construction on or modification to a Lot or Dwelling shall be valid unless issued in writing. Owners may not rely on any verbal approval or statements from any person as the approval required for any such modification.

**Section 10.6. Appeal.** If the ACC does not consist of the Board of Directors, and the ACC disapproves any application or part thereof, an Owner may, in writing, appeal the ACC's decision to the Board. The notice of appeal must be sent to the Board by certified mail and received by the Board within 14 days from the date of the ACC's disapproval notice, otherwise the decision of the ACC shall become final and all rights of appeal shall terminate. Within 45 days of receipt of a timely appeal, the Board shall

approve, disapprove, or conditionally approve the Owner's application, and such ruling shall be final and binding on the Owner.

**Section 10.7. Professional Consultants and Fees.** The Board of Directors shall be authorized to charge, as a specific assessment, against any Owner and Lot: (1) a reasonable administrative fee for review of modifications on, or submitted plans for, such Lot; and (2) reasonable fees for any architect, engineer or other professional consultant engaged by the Board to assist with review of modifications on, or submitted plans for, such Lot.

**Section 10.8. Limitation of Liability.** Review and approval of any application pursuant to this Article may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board of Directors 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 of Directors, the ACC, nor 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, nor may any action be brought against the Association, the Board of Directors, the ACC, or any member thereof, for any such injury, damage or loss.

**Section 10.9. Commencement and Completion of Modifications to a Lot.** Once approved by the Board or ACC:

(a) The construction of a new Dwelling approved hereunder or work on other improvements or modifications to a Dwelling or Lot approved hereunder must be commenced within six (6) months from the date of approval, or such approval shall be deemed revoked unless the Board or ACC gives a written extension for commencing the work.

(b) Unless otherwise agreed in writing by the Board or ACC, all construction of a Dwelling approved hereunder shall be completed in its entirety within one (1) year from the date of commencement.

(c) Unless otherwise agreed in writing by the Board or ACC, all construction other than the construction of a new Dwelling shall be completed in its entirety within six (6) months from the date of commencement.

(d) The date of commencement shall be the date of written approval of an application by the Board or ACC. The completion date for a new Dwelling shall be the date a certificate of occupancy is issued by Gilmer County.

**Section 10.10. Enforcement.** Any construction, alteration, or other work done in violation of this Article, the Declaration, the Bylaws or the Subdivision Wide Standards and Design Guidelines 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 Lot of the violating Owner. This enforcement provision is in addition to the enforcement provisions set forth in Article 17.

**Section 10.11. New Dwelling Construction Criteria.** All new Dwellings shall meet the following criteria as well as all construction criteria adopted and published by the Association as Subdivision Wide Standards and Design Guidelines. Changes to the Subdivision Wide Standards and Design Guidelines shall become effective when published to the Owners.



(a) Setback criteria: No Dwelling or any other structure shall be erected nearer to the street right-of-way, or nearer to the side lot line or nearer to the rear lot line than allowed by Gilmer County regulations or nearer than thirty (30) feet from the designated common area around lakes.

(b) Square footage criteria.

- (i) No dwelling shall be erected on any Lot with less than eighteen hundred (1,800) square feet of heated space and where the ground area thereof shall be less than twelve hundred (1,200) square feet of heated space.
- (ii) The minimum requirements of square footage specified in subparagraph (i) shall be exclusive of heated or unheated porches, garages, carports, patios, outside storage rooms, and any unheated areas.
- (iii) If the minimum requirements of square footage specified in subparagraph (i) is deemed impractical by the Board or ACC for a particular Lot due to septic tank and drainage requirements, other regulatory requirements, or the rear or side-entry garage requirements, the ACC may recommend to the Board of Directors, and the Board of Directors may approve, by the affirmative vote of a majority of its members, a reduction of the requirements for such Lot.

(c) Exterior surface criteria: The exterior surface of a Dwelling or any other structure or improvements shall be wood, stone, stucco, cedar, shingle, brick, or vinyl siding and no other siding shall be used unless approved in writing by the Board of Directors or ACC. The exterior surfaces of the backs and sides of residences shall be constructed using substantially the same wood, stone, stucco, cedar, shingle, brick, or combination of such materials as used on the front exterior surface. The type and color of all exterior surfaces must be approved by the Board of Directors or the ACC. There shall be no exposed concrete block. No wooden stoops shall be allowed on the front of a Dwelling or on any side of a Dwelling or other building that faces a street. Any "out" building shall be constructed in like style and materials as the main residence.

**Section 10.12. Criteria for Modifications to a Previously Improved Lot.** Any modification to a Lot on which has been erected an approved Dwelling or which has otherwise been improved with the approval of the Board or ACC must not so change the Dwelling or Lot as to violate the criteria set forth in Subsection 10.11 or in the Subdivision Wide Standards and Design Guidelines.

**Section 10.13 Shoreline.** No seawalls or construction at the shoreline shall be permitted including any type of dock or deck. No fences or walls will be permitted along the shoreline or lake frontage of any Lot.

## **ARTICLE 11. USE RESTRICTIONS AND RULES**

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**Section 11.1. General.** Each Owner shall be responsible for ensuring that the Owner's family, guests, tenants, Occupants and Domestic Partner comply with all provisions of the Association Legal Documents. In addition to the following use restrictions, the Board of Directors may establish rules and regulations applicable to the Lots and the Common Property in accordance with the terms hereof and as specified in the By-Laws.

**Section 11.2. Residential Use.** All Lots shall be used solely as residential Lots and no structure shall be erected on any Lot other than a detached single-family Dwelling or outbuilding as permitted in Section 11.6. No trade or business of any kind may be conducted in or from a Lot or on any portion of the Common Property, except that the Owner or Occupant residing in a Dwelling may conduct such ancillary business activities within the Dwelling so long as:

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

(b) 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;

(c) the business activity is legal and conforms to all zoning requirements for the Subdivision;

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

(e) 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;

(f) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision and does not otherwise violate any other provision of the Association's Legal Documents, as determined by the Board's discretion; and

(g) the business activity of the Owner does not involve use of the Common Property, except for necessary access to and from the Lot by permitted business invitees.

The Board shall be the sole arbiter of whether any business activity in the Subdivision conforms to the above limitations. The Association has no liability for any business activity in the Subdivision. The Association also has no liability for any action or omission by it, its Directors, Officers, agents, representatives and/or vendors, that may adversely impact an Owner's or Occupant's business activity.

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 there for.

**Section 11.3. Number of Occupants.** The maximum number of occupants in a Dwelling on a Lot shall be limited to two (2) people per bedroom in the Dwelling as shown on the approved plans. "Occupancy," for purposes hereof, shall be defined as staying overnight in a Dwelling for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a Dwelling on the Effective Date hereof. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will be the Authorized Corporate Occupant to occupy the Dwelling on the Lot, as provided in Article 13, Section 13.1 hereof. The Authorized Corporate Occupant to occupy the Dwelling may not be changed more frequently than once every twelve (12) months without the Board's written consent.

**Section 11.4. Occupants Bound.** All provisions of the Declaration, Bylaws and of any rules and regulations, use restrictions or Subdivision Wide Standards and Design Guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to Occupants even though Occupants are not specifically mentioned. The Owner shall be responsible for ensuring that an Occupant, and the guests, invitees and licensees of an Owner or Occupant strictly comply with all such provisions.

**Section 11.5. Subdivision or Combination of Lots.** No Lot shall be subdivided. No Lot shall have its boundary lines changed except with the prior written approval of

the Board or its designee. Adjacent Lots may be combined to create a larger site for the construction of a Dwelling only if approved by a majority of the Total Association Vote. A condition of approval for any such combination shall be the obligation to continue to pay assessments for each Lot in the proposed combination. Both a boundary line change and a Lot combination will require approval by a majority of the Total Association vote prior to Board approval.

**Section 11.6. Outbuildings.** No tents, shacks, garages, carports, barns, tool sheds, dog houses, cages or coops or other structure shall be erected by any Owner or Occupant on any Lot without the prior written approval of the Board or ACC. No temporary or permanent residence shall be established on any Lot in a trailer, mobile home, or other vehicle, or in a basement, tent, shack, garage, barn, log cabin or any other outbuildings. No Dwelling of a temporary character shall be permitted under any circumstances.

**Section 11.7. Garages.** It is prohibited for an Owner or Occupant of a Dwelling to convert any garage to any other use. Garage doors should remain closed when not in use for ingress, egress or garage use, or when the Owner or Occupant is not outside on the Lot. The Board may establish additional rules regarding garages.

**Section 11.8. Vehicles and Parking.** The Board may adopt reasonable rules limiting the number of vehicles that may be parked in the Subdivision. Vehicles only may be parked in garages, driveways on Lots, designated parking spaces, or other areas authorized in writing by the Board. Vehicles may not be parked on any grass or landscaped areas on Lots. Vehicles shall be operated within the posted speed limits.

Disabled and stored vehicles are prohibited from being parked in the Subdivision, except in garages. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains in the Subdivision, other than in a garage, for 14 consecutive days or longer without prior written consent of the Board.

Boats, jet-skis, trailers, buses, taxis, hearses, limousines, recreational vehicles, motor homes, campers, panel trucks, trucks with a cargo-load capacity of one ton or more, full-size vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than Sheriff's, Marshall's, or police officer's vehicles marked as such), golf carts, ATVs and other unlicensed vehicles, and boat trailers are also prohibited from being parked in the Subdivision, except: (1) in garages or as otherwise approved by the Board; or (2), in the case of service vehicles, on a temporary basis during daytime business hours or during emergencies for the purpose of serving a Lot, or (3) a motor home, camper, truck with camper top, boat, boat trailer, or like equipment (as any of the preceding may be further defined by the Board) may be temporarily parked in a driveway for a period not to exceed forty-eight (48) hours for the purpose of loading and unloading. The Board may establish additional rules regarding vehicles and parking in the Subdivision.

Golf carts, ATVs and other unlicensed vehicles may be operated in the Subdivision only in accordance with the rules and regulations adopted by the Board that govern the use of such vehicles.

If any vehicle is parked in the Subdivision in violation of this Section or the Association's rules, the Board or agent of the Association may tow or boot the vehicle after 24 hours written notice. Such notice shall: (1) be placed on the vehicle; (2) specify the nature of the violation; (3) warn of possible towing or booting; and (4) state the name and telephone number of a person to contact regarding the violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the original notice and without further notice.

If a vehicle is towed or booted in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the

towing activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines.

**Section 11.9. Fences.** No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Subdivision, including any Lot, without the prior written consent of the Board or ACC. The Board or ACC may issue guidelines detailing acceptable fence styles or specifications and locations, but in no event may a chain link fence be approved. All applications for fencing shall be submitted in accordance with Article 11 of this Declaration. The Board or ACC may require that all or a part of the fencing be painted in order to preserve architectural harmony within the Subdivision.

**Section 11.10. Antennas and Satellite Dishes.** Except as provided below or otherwise approved by the Board of Directors, or as may be permitted under law, 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 in any portion of the Subdivision. Direct broadcast satellite ("DBS") antennas and multi-channel multi-point distribution services ("MMDS") one meter or less in diameter and television broadcast service antennas may be installed in accordance with rules and regulations of the Federal Communication Commission ("FCC") and the Association. Any such devices shall be installed in the least conspicuous location available on the Lot that permits reception of an acceptable quality signal. All such devices shall be promptly removed when no longer functioning or used.

**Section 11.11. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot or the Common Property, with the exception of a reasonable number of dogs, cats, or other usual and common household pets. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet, such as dog houses and dog runs, shall be constructed or maintained on any part of the Subdivision without prior written approval of the Board or ACC. For the purposes of this Section, the word "livestock" shall mean cattle, swine, equine, sheep and goats.

No animals determined in the Board's sole discretion to be dangerous may be brought onto or kept in the Subdivision at any time. A dangerous animal includes, but is not limited to, breeds of dogs classified as such by the State of Georgia or Gilmer County. Furthermore, any pet that is permitted to roam free, or in the Board's sole discretion, endangers the health of any Owner or Occupant, makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners or Occupants or to the owner of any property located adjacent to the Subdivision, may be permanently removed by the Board from the Subdivision upon seven (7) days written notice to the owner of such pet. If the Owner or Occupant fails to remove the pet from the Subdivision, the Board may seek immediate injunctive relief to obtain a court order to remove the pet, with all costs incurred, including actual attorneys' fees incurred, shall be assessed to the Owner.

All Owners and Occupants keeping pets within the Subdivision shall comply with all applicable governmental ordinances and regulations. Pets shall also be registered, licensed and inoculated as required by law. Any Owner or Occupant who keeps or maintains any pet upon the Subdivision shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Subdivision.

The Association may establish additional rules regarding pets in the Subdivision, which may include restrictions on breeds, the number of permitted pets and requirements to pick up after one's pet in the Subdivision.

**Section 11.12. Prohibition of Damage and Noise.** Noxious, destructive, offensive or unsanitary activity shall not be carried on within the Subdivision. No Owner or Occupant may use or allow the use of the Lot or any portion of the Subdivision at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a

nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Subdivision.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Georgia law.

**Section 11.13. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices and the performance of oil changes to motor vehicles, shall not be pursued or undertaken on any part of the Subdivision other than within garages. Clothing, clotheslines, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed outside the Dwelling. No wood piles should be visible from any street. No building materials may be placed outside a Dwelling or on unimproved Lots in view of any street except temporarily in connection with an actively ongoing construction project that has been approved by the Board or ACC or does not require such approval. Owners and Occupants shall maintain any outdoor items in a neat and attractive condition, as determined in the Board's sole discretion.

**Section 11.14. Trash Disposal.** The disposal of trash shall be subject to the following and to any additional rules the Board may adopt:

(a) No garbage, trash, rubbish or food waste shall be placed on the Common Property temporarily or otherwise, except if placed in appropriate sealed bags inside proper receptacles for collection.

(b) Owners and Occupants shall regularly remove or cause to be removed all garbage, trash, rubbish or food waste from their Lots and shall dispose of same in appropriate sealed bags placed in proper receptacles for collection or transport outside the Community.

(c) All garbage cans and other similar items shall be located or screened so as to be concealed from view of neighboring Lots and the streets except after 8:00 p.m. the night before designated trash pick-up days until 8 p.m. the night of trash pick-up days.

(d) Except as permitted by the Board and within all necessary government permits, no person shall dump garbage, trash, rubbish, food waste, vegetation (including without limitation leaves, shrubbery, dead branches, or grass clippings) or any other form of solid waste on any Lot or on the Common Property or burn such solid waste on any Lot or on the Common Property.

**Section 11.15. Use of Common Property Other Than Lake.** 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 the prior written consent of the Association, except as specifically provided herein.

With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Property for use for a period of time as set by the Board. The Association shall be permitted to charge such Owner or Owners reasonable fees in connection with the reservation and use of any portion of the Common Property (**See Section 11.16 for Use of Lake**). Any such Owner or Owners who reserve a portion of the Common Property as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common 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. Any recreational area or other areas or equipment located on the Common Property shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

**Section 11.16. Use of Lake**

The Lakes within Whitestone Lake Estates Subdivision were created to be and will be maintained primarily as a quality ski site for organized competition-style water skiing. Water skiing will have priority over other water sports unless prior arrangements are made through the Board. Only boats owned by the Association are permitted to be used in the lakes unless otherwise approved by the Board. ("Use of Lakes").

(a) Use of the Lakes is subject to imposition of fees and rules and regulations by the Board of Directors which shall be known as the "Whitestone Ski Club Rules" ("Rules"). The per session fee need not be the same for Primary Users and Secondary Users. It shall be the duty of the Board of Directors to annually provide each Lot owner with a copy of the Rules and to post them at the boat house.

Use of Lake privilege may only be exercised by a Primary User or a Secondary User. Regardless of the number of Owners of a Lot, there shall be only one Primary User. When a Lot is owned by more than one person ("Multi-Owner Lot") or is owned by one or more corporations, partnerships, limited liability corporations, trusts or any other non-natural person ("Corporate Owners"), the Owners shall identify the person assigned the Use of Lakes privilege as the Primary User. There can only be one Primary User per Lot. All other persons that have an ownership interest in a Lot as a Multi-Owner Lot or as a Corporate Owner shall be designated as Secondary User(s).

The name of the Primary User and the Secondary User(s) must be provided in writing to the Board of Directors by January 1<sup>st</sup> of each year. If notice is not received on time, then the person or persons identified in the previous year's notice shall continue. The name of the Primary User of a Multi-Owner Lot and the Primary User of a Corporate Owner may be changed only once per calendar year, unless otherwise approved in writing by the Board of Directors. The Use of Lakes privileges of a Primary User and a Secondary User includes his or her spouse or Domestic Partner and their dependent children.

(b) An owner must be present when their guest uses the lake. All guests must sign a release form before using the lake and their lake time will be considered that of the property owner.

**Section 11.17. Tree Removal.** No trees or shrubs on any portion of the Common Property nor any tree measuring more than six (6) inches in diameter measured three (3) feet from the ground shall be removed without the express written consent of the Board, except for diseased or dead trees as confirmed by a certified arborist. The Board may require tree removal of diseased or dead trees for the safety of the community.

**Section 11.18. Abandoned Personal Property.** Personal property, except for personal property owned by the Association, is strictly 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 or on the rights-of-way located within the Subdivision. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property or on streets or other rights-of-way located on the Subdivision in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Article, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

**Section 11.19. Impairment of Dwellings and Easements.** An Owner shall do no act nor any work that will impair the structural soundness or integrity of any Dwelling or impair any easement or other interest in real property, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

**Section 11.20. Firearms.** The use of firearms in the Community shall be in accordance with the laws of Gilmer County and the State of Georgia. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types. The Association may use firearms as required for pest control.

**Section 11.21. Signs.** Except as may be provided for herein or as may be required by legal proceedings or any governmental construction permitting process, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain in the Subdivision without the prior written consent of the Board of Directors or ACC, other than: (1) two professional security signs displayed on a Lot; (2) one professionally lettered "For Sale" in a style approved by the Board or the ACC; (3) one professionally lettered sign denoting recent application of herbicides or other lawn treatments; and (4) one political sign, no greater than 24" x 24" per Lot (placed no sooner than 2 weeks before the election and removed no later than 5 days after the election). The Board shall have the right to erect signs on the Common Property. The Board may establish additional rules regarding signs.

**Section 11.22. Temporary Decorations.** The Association may establish rules regarding the placement of holiday and other celebratory decorations or announcements on Lots. All holiday decorations shall be removed within two days of the last day of the holiday except that, for holidays occurring in November and December, all holiday decorations shall be removed no later than January 15.

**Section 11.23. Yard Sales.** No garage sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Subdivision without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

**Section 11.24. Air Conditioning Units.** Except as may be permitted by written consent of the Board or ACC, no window air conditioning units may be installed in a Dwelling.

**Section 11.25. Pools.** Above ground swimming pools are prohibited. In-ground pools require prior written approval as provided in Article 10.

**Section 11.26. Lighting, Cameras, and Speakers.** Except as may be permitted by the Board or ACC, exterior lighting shall not be permitted except for (a) approved lighting as originally installed on a Lot; and (b) illumination for all exterior lighting shall be generated from clear light bulbs or such other light bulbs specified by the Association. Exterior cameras and speakers that are visible from a road or another Lot are not permitted without the express written approval of the Board.

**Section 11.27. Mailboxes.** All mailboxes shall be uniform in design and construction and approved by the Board or ACC. Only one mailbox may be located on each Lot. Owners shall maintain their mailboxes (including house numbers, posts, and hinged doors) in good condition and shall replace or restore any destroyed or damaged mailboxes on their Lot. The Board or ACC may establish mailbox standards and require reasonable modifications or upgrades to mailboxes and mailbox posts to meet revised Subdivision standards.

**Section 11.28. Gas Storage.** No exposed, above ground or underground tank or storage facilities should be permitted on any Lot for the storage of gasoline, diesel, kerosene or other substances with the exception of storage tank of propane gas for heating purposes. Said tank should be placed in a fenced or hidden location so as not to be visible from any road. The Association may maintain a fuel tank on the Common Property for the purpose of providing fuel for boats.

**Section 11.29. Drainage.** Catch basins and drainage areas are the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupancy of any

Lot may obstruct or re-channel the drainage flows after the location and installation of drainage swells, storm sewers, or storm drains. The Association reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. The Association hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

## **ARTICLE 12. MAINTENANCE**

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**Section 12.1. Association's Responsibility.** The Association shall maintain and keep in good repair, and where necessary replace (subject to any insurance then in effect) all property within the Area of Common Responsibility, including but not limited to, all landscaped, grassy, wooded and mulched areas located on the Common Property.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Dwelling, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Area of Common Responsibility or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, family, or Domestic Partner for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest, family or Domestic Partner for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner, his or her family, Domestic Partner, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

In performing its responsibility 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 of Directors.

Any maintenance or repair performed on or to the Common Property by an Owner, Domestic Partner 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 and risk of such Owner, Domestic Partner or Occupant, and the Owner, Domestic Partner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair unless the Board in its discretion agrees in writing to reimburse some or all of the expense.

**Section 12.2. Owner's Responsibility.** Except as provided in Section 12.1 above, all maintenance or repair of the Dwelling and Lot shall be the responsibility of the Owner thereof. Such maintenance shall be performed consistent with this Declaration and the Subdivision Wide Standards and Design Guidelines. Any maintenance which involves an exterior change, including, without limitation, landscaping and planting or repainting of the exterior of improvements in a different color, shall require prior approval of the Board or the ACC pursuant to Article 10 of this Declaration; provided,



however, that the Board may, in Subdivision Wide Standards and Design Guidelines, or other rules, exempt certain types of maintenance and repair work from requiring prior approval.

Each Owner also shall be obligated:

(a) With respect to improved Lots, to maintain all grounds visible from a street in a neat manner, with grass regularly trimmed and edged, weeds controlled, landscape and tree beds regularly mulched and edged, and debris and fallen trees and branches promptly removed.

(b) With respect to unimproved Lots, to keep mud, silt, fallen trees or branches, and other materials from entering onto Subdivision roads or into waterways adjacent to the Subdivision.

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

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

(e) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the 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 Owner, his or her family, Domestic Partner, tenants or guests, with the cost thereof assessed as a specific assessment.

### **Section 12.3. Failure to Maintain.**

(a) If the Board of Directors 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 within his or her Lot for which he or she is responsible hereunder, the Association may give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. Such notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. The Owner shall have ten (10) days from receipt of such notice within which to complete maintenance or repair on his own, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days and diligently pursue completion thereafter. If the Owner does not undertake or complete the work on his own in a timely manner, all reasonable costs incurred by the Association to complete the work shall be assessed against the Owner as a specific assessment.

(b) If the Board of Directors makes a determination, after reasonable notice and an opportunity to be heard, that a need for maintenance, repair, or replacement which is in the Area of Common Responsibility is caused through the willful or negligent act of any Owner, his or her family, Domestic Partner, guests, tenants, or invitees, and is not covered or paid by insurance, in whole or in part, the Association may, without further notice, provide such maintenance, repair or replacement at the Owner's sole cost and expense, and all reasonable costs incurred by the Association to complete the work shall be assessed against the Owner as a specific assessment.

(c) Notwithstanding anything in this Subsection, no prior notice of the Association's intent to perform the work described herein at the Owner's expense shall be required if the Board of Directors determines that an emergency exists that requires immediate action.

(d) These enforcement provisions are in addition to the enforcement provisions set forth in Article 17.

**Section 12.4. Maintenance Standards and Interpretation.** The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

## **ARTICLE 13. LEASING**

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### **Section 13.1. Definitions.**

#### **Leasing.**

(a) For the express purpose of preserving the character of the Subdivision as a community of predominantly owner-occupied Lots, the Leasing of Lots is prohibited, except as provided herein. For the purposes of this Declaration "Leasing" means the Occupancy of a Lot by any person(s) other than: (1) the Owner or a parent, child or legal spouse of an Owner (collectively referred to as "Authorized Occupant"); (2) an Authorized Corporate Occupant; or (3) a roommate of an Authorized Occupant or Authorized Corporate Occupant, when the Authorized Occupant or Authorized Corporate Occupant also Occupies the Lot as his or her primary residence. Leasing of Lots is allowed only by: (1) an Owner who has received a Leasing Permit as provided below; (2) an Owner who has received a Hardship Permit as provided below; or (3) the Association. Leasing Permits and Hardship Permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners (including a subsequent Owner of a Lot where such permit was issued to the Owner's predecessor-in-title). In its sole discretion, the Board may adopt Rules to accommodate and allow for periodic overnight guests.

Owners who want to lease their Lots may do so only if they have applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit". Such a permit will allow an Owner to lease his or her Lot, provided that such leasing is in strict accordance with the terms of the Permit and this Article. The Board of Directors shall have the authority to establish conditions as to the duration and use of such Permits consistent with this Article.

(b) **Corporate Occupancy.** If an Owner is a corporation, limited liability company, partnership, trust or other legal entity or an unincorporated association that is not a natural person, the Owner shall designate in writing to the Board an individual who will Occupy the Lot (hereafter the "Authorized Corporate Occupant"). An Authorized Corporate Occupant shall only be a single officer, majority or 50% shareholder/member of an Owner that is a corporation; the majority or 50% member of an Owner that is a limited liability company; the majority or 50% member of an Owner that is a partnership; or a single beneficiary of an Owner that is an non-revocable trust; provided the Owner, or other interest holder in the Lot or in the Owner, does not receive any rent or other consideration for such Occupancy and provided further that, with the exception of a single beneficiary of an Owner that is a trust, the Authorized Corporate Occupant must perform a valid corporate/entity/partnership/association function(s) for the Owner that is unrelated to the Lot or the Authorized Corporate Occupant's Occupancy thereof. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the Owner. The Authorized Corporate Occupant may not be changed more frequently than once every 12 months without the Board's written consent, which the Board may grant or withhold in its sole discretion.

**Section 13.2. Leasing Permits.** The Board of Directors shall approve an Owner's written request for a Leasing Permit if the total number of current, outstanding Leasing Permits is less than twenty-five percent (25%) of all the Lots in the Subdivision; provided, however, a Leasing Permit shall not be issued to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or if the Owner is in violation of the Declaration, Bylaws or rules and regulations promulgated by the Board. Owners who have been denied a Leasing Permit shall be placed on a waiting list to be issued such a permit, if they so desire, when the above conditions have been satisfied. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

For the purpose of facilitating turnover of the waiting list for Leasing Permits, the Leasing Permit granted to an Owner hereunder shall automatically expire after three (3) years (1,095 days) of Occupancy by a tenant or tenants. In calculating the three (3) year period, the time period during which a Lot is not subject to a written lease and is not occupied by a tenant or tenants shall not be counted. Provided, however, that, notwithstanding anything herein to the contrary, the Leasing Permit granted to an Owner hereunder shall, in all instances, expire no later than forty-five (45) months after it was issued.

**Section 13.3 Hardship Permits.** If the inability to lease will result in an undue hardship to the Owner, then the Owner may seek to Lease on a hardship basis, for a term not to exceed one (1) year, by applying to the Board of Directors in writing for a Hardship Permit. The Board may approve or deny an Owner's request for a Hardship Permit in its sole discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship; (2) the harm, if any, which will result to the Subdivision if such permit is issued; (3) the number of outstanding Hardship Permits; (4) the Owner's ability to cure the hardship; and (5) whether previous Hardship Permits have been issued to such Owner; provided, however, a Hardship Permit shall not be issued to any Owner if the Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or if the Owner is in violation of the Declaration, Bylaws or rules and regulations promulgated by the Board.

A "hardship" as described herein may include, but is not be limited to, the following situations: (1) when the Board determines that an Owner must relocate his or her residence more than 40 miles outside of Gilmer County, Georgia and cannot, within six months from the date that the Lot was placed on the market, sell the Lot, except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) when the Board determines that an Owner must temporarily relocate more than 40 miles outside of Gilmer County, Georgia for employment purposes and intends to return to reside in the Lot within one year; or (3) when an Owner dies and the Lot is being administered by his or her estate.

Unless otherwise provided in writing by the Board in its sole discretion, a Hardship Permit authorizes an Owner to lease the Lot once for a term not to exceed one year and shall automatically expire at the conclusion of such one year term.

A Hardship Permit shall be revoked automatically if, during the term of such permit, the Owner is approved for and receives a Leasing Permit. An Owner may apply for an additional Hardship Permit at the expiration or revocation of a previous one.

**Section 13.4 Leasing Provisions.** Leasing permitted under this Article, shall be governed by the following provisions:

(a) Notice. At least seven (7) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed lease agreement. The lease must conform to the Association's Legal Documents. If it does not conform, the Board shall notify the Owner of the action to be taken to bring the lease in compliance. Nothing herein shall give the Board the authority to disapprove a tenant or require a minimum amount of rent.

(b) General. Dwellings may be leased only in their entirety; no rooms or fractions of Lots may be leased without prior written Board approval. All leases shall be in writing. There shall be no subleasing of Dwellings or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Dwelling, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Lot. The Owner must provide the lessee copies of the Association's Legal Documents.

(c) Liability for Assessments; Compliance. Each Owner covenants and agrees that any lease of a Dwelling 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, and the lessee, by occupancy of the Dwelling, agrees to the applicability of this covenant and

incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. The Owner and lessee shall comply with all provisions of the Association's Legal Documents and shall control the conduct of all other occupants and guests of the leased Dwelling in order to ensure such compliance.

If a Dwelling is leased or occupied in violation of this Article or if the Owner, lessee, or a person living with the lessee, violates the Association's Legal Documents, the Board of Directors shall be authorized, in addition to all other available remedies, to levy fines against the lessee and/or the Owner, and to suspend all voting and/or Common Property use privileges of the Owner, lessor, or other occupants and guests.

If a Dwelling is leased or occupied in violation of this Article, the Association may require the Owner to evict the tenant. If the Owner, a family member or agent of the Owner, the lessee, or a person living with the lessee, or an invitee of the Owner or lessee violates the Association's Legal Documents, such violation is deemed to be a default under the terms of the lease and shall authorize the Owner or the Association, as more fully described herein, 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 Association's Legal Documents, 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. Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.

(ii) Use of Common Property. Excluding Lake Use (Section 11.16), 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. No Owner may delegate his or her lake use or ski club privileges.

(iii) Each Owner hereby agrees that if he or she leases a Dwelling and fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then

(a) the delinquent Owner will be deemed to have assigned any rent received or due from the lessee during the period of delinquency;

(b) upon request by the Board and notice of the amount of unpaid assessments or other charges, the lessee shall pay to the Association assigned rents as they would otherwise come due throughout the remainder of the lease term (and throughout any period of occupancy following the lease term) until the unpaid assessments and charges, including accruing charges, are paid;

(c) All such payments made by the lessee to the Association shall reduce by the same amount lessee's obligation to make monthly rental payments to the Owner and Owner's obligation to pay overdue assessments covered by such payments;

(d) Lessee shall be deemed to be in default of the lease and subject to eviction by the Owner or the Association if the lessee fails to comply with the Board's request to submit rent payments to the Association or in lieu thereof to pay to the Association all amounts authorized under the

Declaration as if lessee were the Owner.

The provisions in this subparagraph (iii) shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible. These provisions shall be in addition to the right of the Board to revoke the Lot's leasing permit when a Lot Owner becomes sixty (60) days or more delinquent as provided elsewhere in Section 13.5. Failure of a Lot Owner to comply with this Section shall subject the Owner and the Tenant to the sanctions authorized in this Article 1.

(e) Applicability of this Article. Notwithstanding the above, this Article shall not apply to any leasing transaction entered into by the Association, or by any first Mortgagee who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

**Section 13.5 Revocation of Permits.** Leasing Permits and Hardship Permits are automatically revoked upon: (1) the sale or transfer of any ownership or record title interest in the Lot (excluding sales or transfers to an Owner's legal spouse); (2) the failure of an Owner to have a written lease for the Lot (entered into in compliance with the terms of this Declaration and a complete copy given to the Association) and bona fide tenant Occupying the Lot as his/her primary residence for 90 consecutive days at any time after the issuance of such permit; or (3) the Occupancy of the Lot by the Owner. The Board also shall have the power to and may revoke any Leasing Permit or Hardship Permit issued to any Owner if the Lot is shown on the Association's books and records to be more than sixty 60 days past due in any assessment or charge or if the Owner is in violation of the Declaration, Bylaws or rules and regulations promulgated by the Board.

#### **ARTICLE 14. SALE OF LOTS**

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An 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 Article 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 shall give the Board written notice of his or her ownership. Upon failure of a New Owner to give the required notice within the seven day time period provided herein, the Board may levy fines against the Lot and the New Owner thereof, and assess the New Owner for all costs incurred by the Association in determining his or her identity.

#### **ARTICLE 15. MORTGAGEE PROVISIONS**

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

**Section 15.1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number) (therefore becoming an "eligible holder") will be entitled to timely written notice of:

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

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws 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 Mortgage holders.

**Section 15.2. No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 15.3. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 15.4. Amendments by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 15.5. Applicability of this Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Georgia law for any of the acts set out in this Article.

**Section 15.6. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## **ARTICLE 16. EASEMENTS**

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### **Section 16.1. Easements for Use and Enjoyment.**

(a) Every Owner of a Lot shall have a right and easement of entry and exit, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(i) the right, but not the obligation, 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 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 Common Property in the Subdivision 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, Bylaws, or rules and regulations;

(iii) the right of the Association to dedicate or grant permits, licenses or easements over, under, through and across the Common Property to governmental entities for public purposes; and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Association and Owners holding a majority of the total Association vote;

(v) the right of the Board of Directors to permit Architectural changes or alterations which encroach upon the Common Property.

(b) Subject to the limitations on Lake Use imposed in Section 11.16, any Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family, his or her tenants and guests. An Owner shall be deemed to have made a delegation of all these rights, excluding Use of Lakes privileges, to the Occupants of the Owner's Lot, if leased. No delegation shall relieve the Owner of responsibility for compliance with the Declaration and rules and regulations of the Subdivision.

**Section 16.2. Easements for Street Lights and Utilities.** There is reserved to the Association blanket easements upon, across, above and under all Lots on the Subdivision for access, ingress, egress, installation, repairing, replacing and maintaining all utilities and services, and all street lights serving the Common Property, and reading meters for: (a) all utilities serving the Subdivision or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, (c) street lights, and (d) any other services such as, but not limited to, a master television antenna system, cable television system, master satellite system or security system which may be installed to serve the Subdivision. It shall be expressly permissible for the Association, or its designee, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables, bulbs and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, the affected Owner or the Board, as applicable, shall have the right to grant such easement.

**Section 16.3. Easement for Entry.** In addition to the right of the Board to exercise self-help as provided the Declaration, the Board shall have the right, but not the obligation, to enter upon any property in the Subdivision (a) for the purpose of inspecting the property to ensure compliance with this Declaration, the By-Laws and the rules; (b) for emergency situations; (c) to respond to concerns affecting the safety and security of persons in the Subdivision; and (d) as reasonably necessary for the proper maintenance and operation of the Subdivision. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition after request by the Board or in an emergency situation. The entering party shall be responsible for any damage caused.

**Section 16.4. Easement for Association Maintenance.** There is hereby reserved to the Association and its designee, an easement and right across all portions of the Subdivision, to allow the Association to fulfill the maintenance obligations described in this Declaration. This easement shall be exercised with a minimum of interference to the quiet enjoyment of the Owner's property, reasonable steps shall be taken to protect the Owner's property, and any Person causing damage to the Owner's property shall repair the damage at its sole expense.

**Section 16.5. Easements for Use and Maintenance of Lakes: Pedestrian Easement.**  
(a) There is hereby reserved to the Association a perpetual easement across

such portions of the Subdivision determined in the sole discretion of the Association, as is reasonably required for maintenance of any lake, lakebed or shoreline that is located within the Subdivision. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the property adjacent to the lake, reasonable steps shall be taken to protect the Subdivision, and damage to the Subdivision shall be repaired by the Person causing the damage at their sole expense.

(b) There is hereby reserved to the Association a perpetual pedestrian easement for access to any lake within the Subdivision for the Benefit of the Association and Owners if and to the extent any such easement is shown on any plat for the Subdivision recorded by the Association, or the prior Declarant, in the land records of the county where the property is located.

**Section 16.6. Easement for Entry Features and Street Signs.** There is hereby reserved to the Association and its designee an easement over and upon all of the Subdivision for ingress to, egress from, installation, construction, landscaping and maintenance of entry features, street signs and perimeter fencing for the Subdivision. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and perimeter fencing and the right to grade the land under and around the entry features and perimeter fencing.

**Section 16.7. Public in General.** The easements and rights created in this Article do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, that nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights if previously recorded in the Official Records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Subdivision), all or any portion of the Subdivision which, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

## **ARTICLE 17. AUTHORITY AND ENFORCEMENT**

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**Section 17.1. Compliance with Association Legal Documents.** All Owners, Domestic Partners, Occupants, Corporate Occupants, and all of their family members and guests shall comply with the Association Legal Documents. The Association, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Association Legal Documents directly against all Violators. However, if an Owner's family member, Domestic Partner, guest, Occupant, or Corporate Occupant violates the Association Legal Documents, the Association, in its sole discretion, is permitted to enforce the terms of the Association Legal Documents against: (1) only the Owner; (2) only the violating family member, Domestic Partner, tenant, guest Occupant, or Corporate Occupant; or (3) both the Owner and the violating family member, tenant, guest Occupant, or Corporate Occupant. Notwithstanding anything herein to the contrary, the Owner of the Lot is always ultimately responsible for his or her own actions and the actions of all family members, Domestic Partner, Occupants, Corporate Occupants, guests, and lessees (and their family members and guests) of such Lot.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed independently for relief from interference with his or her personal or property rights against a Person violating the Association Legal Documents. The Board of Directors may, in its discretion, require the aggrieved Owner or Occupant to independently pursue all available remedies under Georgia law against the Violator before the Association intervenes and commences enforcement action against such Violator.

**Section 17.2. Types of Enforcement Actions.** In the event of a violation of the Association Legal Documents, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot:



- (a) Suspend all Violators' rights to use the Common Property;
- (b) Suspend the voting rights of a violating Owner;
- (c) Impose reasonable fines against all Violators, which shall constitute a lien on the violating Owner's Lot;
- (d) Use self-help to remedy the violation;
- (e) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the Violator to cease and/or correct the violation; and
- (f) Record in the Gilmer County land records a notice of violation identifying uncured violation of the Association Legal Documents regarding the Lot.

**Section 17.3. Suspension and Fining Procedure.** Except as provided below, before imposing fines or suspending the right to use the Common Property or the right to vote, the Association shall give a written violation notice to the Violator as provided below.

- (a) **Violation Notice.** The written violation notice to the Violator shall:
  - (i) Identify the violation, suspension(s) and/or fine(s) being imposed; and
  - (ii) Advise the Violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration of suspension(s) or the fine(s).

Notwithstanding the Violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

(b) **Violation Hearing.** If the Violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a Violator fails to timely request a violation hearing, such Violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a Violator timely requests a violation hearing, the Violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

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

- (i) impose late charges on delinquent assessments;
- (ii) suspend a violating Owner's voting rights if the Violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
- (iii) suspend a Violator's right to use the Common Property if the Violator's Lot is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the Violator's right to use the

Common Property shall be automatic (which shall allow the Association to tow and/or boot a Violator's vehicle located on the Common Property without complying with the Suspension and Fining Procedures described above);

(iv) Engage in self-help in an emergency;

(v) Impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the Violator; or

(vi) impose fines if the same violation occurs again on the same Lot, in which case fine(s) may be imposed on a per diem basis without any further notice to the Violator.

**Section 17.4. Injunctions and Other Suits at Law or in Equity.** All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Association Legal Documents. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a Violator to cease and desist and/or correct any violation.

**Section 17.5. Costs and Attorney's Fees for Enforcement Actions.** In any action taken by the Association to enforce the Association Legal Documents, the Association shall be entitled to recover from the Violator, any and all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Lot.

**Section 17.6. Failure to Enforce.** The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each Violator. The failure of the Board to enforce any provision of the Association Legal Documents shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure to enforce if the Board of Directors determines that:

(a) the Association's position is not strong enough to justify taking enforcement action;

(b) a particular violation is not of such a material nature as to be objectionable to a reasonable person;

(c) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;

(d) the aggrieved Owner or Occupant asserting a failure of enforcement has not independently pursued all available individual remedies under Georgia law; or

(e) the Association enforces only against an Owner for the violation of the Owner's family member, guest or Occupant or the Association does not enforce against the Owner and enforces only against the violating family member, guest or Occupant.

## **ARTICLE 18. AMENDMENTS**

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**Section 18.1. Member Approval Procedure.** Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, this Declaration may be amended with the approval of Owners holding two-thirds (2/3rds) of the Total Association Vote. Notice of a meeting, if any, at which a proposed amendment will be considered shall state that an amendment will be considered and describe 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.

**Section 18.2. Amendments to Comply with Law or Conform Documents.** Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to comply with any applicable state, city, federal, or county law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between this Declaration, the Articles, and applicable laws

**Section 18.3. Validity of Amendments.** No Person shall be permitted to bring any legal action to challenge the validity of an amendment to this Declaration or the By-Laws more than one year after the recording thereof in the Gilmer County, Georgia land records.

## **Article 19. General**

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**Section 19.1. Duration.** The covenants and restrictions of this Declaration shall run with and bind all real property in the Subdivision perpetually to the extent provided in the Act.

**Section 19.2. SECURITY.** The Association may, but shall not be required to, provide measures or take actions which directly or indirectly improve security in the Subdivision. Each Owner, for himself or herself and his or her Occupants, tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and has no duty to provide security in the Subdivision. Furthermore, the Association does not guarantee that Owners, Occupants and other people will not commit criminal acts in the Subdivision or that unauthorized people will not gain access to the Subdivision. It shall be the responsibility of each Owner to protect his or her person, family, guests, invitees, and his, her, or their property, and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

**Section 19.3. Dispute Resolution.** Any 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 director, or any agent 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 no less than seven (7) nor more than twenty one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

**Section 19.4. 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 disability or any other basis proscribed by law.

**Section 19.5. Indemnification.** In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or officer of the Association, or serving on any committee of the Board, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best

IN WITNESS WHEREOF, the undersigned Officers of Whitestone Lake Estates Property Owners, hereby certify that the above amendment to the Amended and Restated Declaration and the following amendment to the By-Laws were duly adopted by the required majority of the Association and its membership, with any required notices duly given.

This 13 day of May, 2017.

Sworn to and subscribed to before me this 13 day of May, 2017.

**WHITESTONE LAKE ESTATES PROPERTY OWNERS ASSOCIATION, INC.**

By: [Signature] (Seal)  
President

Attest: [Signature] (Seal)  
Secretary

[Signature]  
Witness

[Signature]  
Notary Public  
[Notary Seal]

[CORPORATE SEAL]

