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Jennifer E. Jordan, Clerk
Pickens County, Georgia

IN THE SUPERIOR COURT OF PICKENS COUNTY
STATE OF GEORGIA

BIG CANOE PROPERTY OWNERS'
ASSOCIATION, INC.,

Plaintiff POA,

v.

BIG CANOE COMPANY, LLC, and
BIG CANOE HOLDINGS GROUP, LLC,

Defendants.

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CIVIL ACTION FILE NO.
2026SUCV0326

DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS

Plaintiff Big Canoe Property Owners' Association, Inc. ("Plaintiff POA") bases its Complaint for Injunctive Relief and Declaratory Judgment on an expired, 25-year old agreement. Plaintiff POA signed that agreement in 2001 with a non-party to this lawsuit: Waterford Mountain Properties, LLP ("Waterford"). The agreement gave Waterford a right (but not an obligation) to annex property into the Big Canoe community. Defendant Big Canoe Holdings Group, LLC ("BC Holdings") was not a party to the contract.

The agreement provided that if Waterford elected to so annex portions of its property during the agreement's 20-year term, those annexed portions would be subject to certain density limits if and when developed by Waterford (subsequent to the annexation). Waterford annexed some of its property into the Big Canoe community during the 20-year term. After the end of the 20-year term, in 2025 Waterford conveyed the remaining un-annexed portion of its property to BC Holdings.

Plaintiff POA asserts that this old annexation agreement currently deprives BC Holdings of its right to fully develop its own property and, that if any of the remaining un-annexed property

were to be acquired by Defendant Big Canoe Company, LLC (“BCC”), the agreement likewise deprives BCC of its development rights and its long-standing right to unilaterally annex property into the Big Canoe community.¹

Plaintiff POA’s complaint fails to state a claim for at least three reasons: First, the annexation agreement expired under its own terms in 2021. Its conditions are no longer in effect. Second, assuming, arguendo, that the agreement functioned as a restrictive covenant, it has expired pursuant to O.C.G.A. § 44-5-60(b). Third, the agreement was not a restrictive covenant running with the land, because (among other reasons) it was not part of any conveyance of the subject property to Plaintiff POA or to any other party.

FACTS

BCC is the developer of the community known as “Big Canoe.” (Complaint, Ex. A, p. 1). Plaintiff POA is the Big Canoe property owners’ association. (Complaint, ¶ 1 and Ex. A, p. 1.)

In May of 2001, Plaintiff POA and Waterford entered into a right-to-annex agreement. (Complaint, ¶ 6.) Waterford was the owner of approximately 300 acres of land adjacent to the Big Canoe community (the “Waterford Property”). (Complaint, ¶ 6.) The agreement was titled “Annexation Agreement.” (Complaint, Ex. A.) The Annexation Agreement granted permission to and provided Waterford with a procedure by which Waterford could annex “all or a portion” of the Waterford Property into the Big Canoe community. (Complaint, Ex. A., ¶ 3.) Annexation could be accomplished simply by “the recording of [a] Supplemental Declaration of Covenants

¹ BCC has had the unbridled right to unilaterally annex property into the Big Canoe community since 1972 as set forth in *Art. II, Sec. 2(a) of the “General Declaration”* of the Big Canoe community. The Declaration is referenced in Exhibit A to the Complaint and is recorded in Pickens County at Deed Book 139, page 390 (certified copy attached as Exhibit 1 hereto). Exhibits to the Complaint and matters of public record may be considered in a motion to dismiss. *Marques v. JP Morgan Chase Bank N.A.*, 370 Ga. App. 305 (2023) (exhibits); and *Perry v. Emory Healthcare Services Management, LLC.*, 374 Ga. App. 41, 45-46 (2025) (public record).

and Restrictions in the Pickens County Records” by Waterford. (Complaint, Ex. A, ¶ 1.)

If Waterford annexed a portion of its property, it would receive “the benefit of [] the Amended and Restated General Declaration of Covenants and Restrictions of the Big Canoe Property Owners’ Association and Big Canoe Company....” (Complaint, Ex. A, ¶ 1.)

Per the Annexation Agreement, the decision to annex by Waterford was discretionary, but limited to a 20-year period under the following schedule and subject to certain post-annexation density development limitations as follows:

3. Phasing. The Waterford Property may be annexed in phases in up to five (5) separate tracts over a twenty (20) year period, each with specific density limitations according to the following schedule:

<u>Tract</u>	<u>Specific Areas</u>	<u>Density</u> <u>Units</u>	<u>To be</u> <u>Annexed By</u>
I	Off Wedgewood Drive	26	6/15/2001
II	To be determined	25	6/15/2006
III	To be determined	25	6/15/2011
IV	To be determined	25	6/15/2016
V	To be determined	<u>59</u>	6/15/2021
Total Density Units		160	

The parties will utilize the agreed upon form of Supplemental Declaration attached hereto as Exhibit C to annex each tract of the Waterford Property. BCC’s and Association’s obligations for annexation of the subsequent tracts are conditioned upon WMP’s compliance with all of the terms and conditions of this Agreement.

(Complaint, Ex. A, ¶ 3.)

Waterford annexed some of its property into the Big Canoe community during the 20-year term. (Complaint, ¶¶ 12-13.) After the end of its 20-year term in 2021, Waterford conveyed the remaining un-annexed portion of its property to BC Holdings in 2025. (Complaint, ¶¶ 12-13, 15.) (Plaintiff POA admits that its Complaint only addresses the remaining tracts that were not annexed. [Complaint, ¶¶ 13, 38].)

Notably, the post-annexation development limitations would not become a contractual obligation upon Waterford unless and until Waterford chose to annex and then only applicable as to the annexed tract. (Complaint, Ex. A.) If Waterford violated this contractual obligation (after an annexation), Plaintiff POA would have the contractual right under the Annexation Agreement to enforce Waterford's compliance. But if Waterford chose not to annex, Waterford remained free to develop its unannexed property to any density it wished. (*Id.*)

As noted above, the 20-year term of this right-to-annex agreement expired in 2021. (Complaint, Ex. A, ¶ 3.) It does not have a renewal provision. The Annexation Agreement does not address annexation rights or density development limitations for the unannexed tracts after the expiration of the agreement's 20-year term. (*Id.*)

The Annexation Agreement neither required nor contemplated the conveyance of the Waterford Property to Plaintiff POA. (Complaint, Ex. A.) Nor did the Annexation Agreement require Waterford to convey title to any of the property to Plaintiff POA or to BCC or any other party as a condition of annexation. (*Id.*) Although Plaintiff POA alleges that the Annexation Agreement was recorded in the real estate records of Pickens County and that the Annexation Agreement recites that it will "run with and be binding upon the Waterford Property," (Complaint, ¶ 7), the Annexation Agreement is not a deed of conveyance to Plaintiff POA, and Plaintiff POA does not allege that it was executed as part of any conveyance of the Waterford Property to Plaintiff POA (or anyone else). Plaintiff POA has never received nor held title to the Waterford Property. (Complaint, ¶¶ 12-13 & 15.)

On April 9, 2025 (over four years after the 20-year term), Waterford conveyed a portion of the original, unannexed Waterford Property to BC Holdings by limited warranty deed. (Complaint, ¶ 15 & Ex. B.) That deed does not include any reference to an assignment or to an

assumption of the Annexation Agreement by BC Holdings. (*Id.*) BC Holdings still owns that property, and none of that property has been developed or annexed into the Big Canoe community. (Complaint, ¶¶ 15-18.)

ARGUMENT

A motion to dismiss for failure to state a claim upon which relief can be granted should be granted if (1) “the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted”; and (2) the “movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.” *Stendahl v. Cobb County*, 284 Ga. 525 (2008).

“[I]n assessing whether a claim should be dismissed under O.C.G.A. § 9-1-12(b)(6), a court may consider exhibits attached to and incorporated into the complaint and answer.” *Marques v. JP Morgan Chase Bank N.A.*, 370 Ga. App. 305 (2023). Further, “a court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment.” *Perry v. Emory Healthcare Services Management, LLC*, 374 Ga. App. 41, 45-46 (2025).

I. Standard Governing Restrictions on Land.

“It is the general rule that the owner of land has the right to use it for any lawful purpose, and restrictions upon its use must be clearly established and strictly construed. . . . Doubt as to restrictions and use will be construed in favor of the [owner of the land].” *Copelan v. Acree Oil Co.*, 249 Ga. 276, 278 (1982) (quotation and citation omitted).

“Underlying this rule is the sound policy that land use must be governed by its present owners, and should be subjected only in severely restricted circumstances to control by former owners. Were this not the law, any whim and caprice, once set down by deed, could diminish or

destroy the utility of real property for fully two decades.” *Id.*

“Limitations and restrictions on the use of one’s own land will not be enlarged or extended by judicial construction of the covenant and will be construed in favor of the owner of the land sought to be restricted. The grounds for such interference by the superior court must be based upon evidence which is clear and beyond reasonable doubt of the existence, application, and intent of express restrictive covenants.” *Roth v. Connor*, 235 Ga. App. 866, 867 (1998), (citing *England v. Atkinson*, 196 Ga. 181). “Importantly, restrictions on private property are generally not favored in Georgia....” *Anderson v. Tolomato Island Prop. Owners Ass’n, Inc.*, ___ Ga. App. ___, 2026 WL 1856701, at *2 (June 26, 2026).

II. The Annexation Agreement Expired Under its Terms on May 2, 2021.

The Annexation Agreement is a right-to-annex agreement. It is permissive and not obligatory. It was written as a pathway to *allow* annexation and not as a barrier to preclude it. The Annexation Agreement guaranteed a pathway to annexation during a specific 20-year contract period if Waterford chose to utilize the procedures in the Annexation Agreement. The converse, however, is not true: the Annexation Agreement does not prohibit annexation after the 20-year term expires.

Nor did the Annexation Agreement require Waterford to annex any of its property. And the agreement does not say the property must be annexed within 20 years or not at all.

The provision containing the 20-year period is permissive: “The Waterford Property *may* be annexed in five (5) phases in up to five (5) separate tracts over a twenty (20) year period....” (Complaint, Ex. A, ¶ 3; emphasis added.) *See Holden v. Smith*, 236 Ga. App. 205, 207 (1999) (construing “may” as term of permission). The corresponding post-annexation density development limitations for each of the five tracts are in the same contract provision. Compliance

with those density limitations was a contractual obligation imposed upon Waterford which only came into play if (and only after) a tract was annexed during that 20-year period and applied only to that annexed tract. That is, if an acreage tract were not annexed, the “specific density limitations” for a tract would never become a matter subject to post-annexation contractual enforcement. (Complaint, Ex. A, ¶ 3.) The provision is silent as to the application of any density limitations for unannexed, undeveloped tracts after the expiration of 20 years. (Complaint, Ex. A, ¶ 3.) And there is no renewal provision in the agreement.

So, if Waterford chose not to annex an acreage tract within the 20-year period, the post-annexation contractual density development limitation was not triggered as to any unannexed property. After the expiration of 20 years, the special annexation procedure of the agreement could no longer be used, and the density development limitations became inapplicable as to the unannexed property.

In short, the Annexation Agreement and its post-annexation density development limitations for unannexed tracts expired in 2021. They are no longer in effect.

Had Plaintiff POA intended to proscribe future annexation or development restrictions of the remaining Waterford Property after the 20-year period, it would have said so in the agreement. *See SPI Holdco, LLC v. Mookerji*, 361 Ga. App. 449, 457 (2021) (applying rule of “expressio unius est exclusio alterius”). Further, had Plaintiff POA intended for the provisions to renew after 20 years, they would have included a renewal provision. *Id.* In the absence of a clear expression of an intent to restrict the use of the unannexed Waterford Property, the language of the Annexation Agreement must be construed in favor of the free use of the remaining Waterford Property by the current owner, which is BC Holdings. *See, e.g., Roth v. Connor*, 235 Ga. App. 866, 553-54 (1998). And the same rule of law applies to BCC or any other third party if the latter were to acquire title

to any of the remaining Waterford Property now owned by BC Holdings.

III. The Annexation Agreement also is Unenforceable Pursuant to O.C.G.A. § 44-5-60(b).

Plaintiff POA does not allege that the Annexation Agreement created a restrictive covenant, and the word “covenant” is not used anywhere in the Annexation Agreement. Yet, if the Court were to construe the Annexation Agreement as a restrictive covenant (which is denied), it became unenforceable no later than 2025 pursuant to O.C.G.A. § 44-5-60(b). That Code provision provides in relevant part: “...covenants restricting lands to certain uses shall not run for more than 20 years... in those areas in counties for which zoning laws have been adopted....”

“In 2005, Pickens County enacted a zoning ordinance which became effective on May 2 of that year. At that time, all property in the county became subject to O.C.G.A. § 44-5-60....” *S-D RIRA, LLC v. Outback Property Owners’ Ass’n, Inc.*, 330 Ga. App. 442, 455 (2014).

“Georgia’s appellate courts have interpreted O.C.G.A. § 44-5-60 to mean that any covenants which were in place at the time a zoning ordinance [as here] became effective, but whose term exceeded the 20-year maximum allowed under the statute, may remain in effect for no more than 20 years after the zoning ordinance is adopted.” *Id.* at 456 (citations omitted).

S-D RIRA is directly on point and mandates dismissal. The Annexation Agreement was recorded in 2001. (Complaint, ¶ 6 at Ex. A.) Pickens County enacted its zoning ordinance in 2005. *Id.* at 455. As a restrictive covenant, the Annexation Agreement terminated no later than 2025. The Annexation Agreement does not have a renewal provision. (Complaint, Ex. A.) Therefore, pursuant to O.C.G.A. § 44-5-60, the Annexation Agreement is no longer enforceable. *S-D RIRA*, 330 Ga. App. at 456.

Although O.C.G.A. § 44-5-60(d)(1) does provide for an automatic renewal of certain covenants in limited situations, the Annexation Agreement does not qualify. O.C.G.A. § 44-5-

60(d)(1) provides in relevant part: “Notwithstanding the limitation provided in subsection (b) of this Code section, covenants restricting lands to certain uses affecting planned subdivisions containing no fewer than 15 individual plots shall automatically be renewed....”

When the Annexation Agreement was executed, the Waterford Property was not a “planned subdivision” and had not been subdivided into “15 or more individual plots.” Rather, the Annexation Agreement identifies the subject property as a “302 acre (more or less)” tract of raw land described in a plat recorded in Pickens County at Plat Book JJ, page 233.² (A certified copy is attached as Exhibit 2 hereto.) That plat shows the Waterford Property as a single large tract that is not subdivided or developed. In addition, the Annexation Agreement specifically contemplated that future annexations would also be of large, undeveloped tracts of raw acreage. Therefore, the provisions for automatic renewal of O.C.G.A. § 44-5-60(b) do not apply.

To the extent the Annexation Agreement could be construed as a restrictive covenant, its enforceability expired no later than 2025.

IV. The Annexation Agreement is Not a Restrictive Covenant Running with the Land and is Not Binding on Defendants.

BC Holdings is not a party to the Annexation Agreement. BC Holdings acquired a portion of the unannexed Waterford Property from Waterford by a limited warranty deed in 2025. (Complaint, ¶ 15, Ex. B.) That limited warranty deed does not contain an assignment of the Annexation Agreement to BC Holdings or an assumption of same. (*Id.*) The Annexation Agreement was a permissive right-to-annex contract granted to Waterford for a 20-year term, and

² That reference to the plat is contained in Exhibit A filed with the Complaint, and the plat itself is a matter of public record in the records of Pickens County. “[A] court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment.” *Perry v. Emory Healthcare Services Management, LLC*, 374 Ga. App. 41, 45-46 (2025).

Plaintiff POA does not allege that the Annexation Agreement was executed as part of a conveyance. Plaintiff POA has never held title to the Waterford Property. Therefore, under Georgia law, BC Holdings is not bound by the Annexation Agreement – even if recorded – because (as explained below) the Annexation Agreement is not a restrictive covenant running with the land. *Johnson v. Myers*, 226 Ga. 23 (1970).

“The ‘agreement’ cannot be construed as a covenant running with the land since it was not part of a conveyance of any interest in the land.” *Ronveaux v. Walter Realty Investors*, 148 Ga. App. 776 (1979) (citing *Johnson v. Myers*, 226 Ga. 23 (1970)).

“To constitute a covenant running with the land, **there must first be an interest or estate therein granted**, the covenant must relate to the interest or estate granted, and the act to be done must concern the interest created or title conveyed.” *Johnson v. Myers*, 226 Ga. 23, 26 (1970) (quotation omitted) (emphasis added). *See also, Copelan v. Acree Oil Co.*, 249 Ga. 276, 277-78 (1982); *Muldawer v. Stribling*, 243 Ga. 673, n.1 (1979).

“[A] covenant may run with the land only when there is a subsisting privity of estate between the covenantor and covenantee, that is, when the land itself, or some estate or interest therein...to which the covenant may attach as its vehicle of conveyance, is transferred....” *Myers*, 226 Ga. at 25.

The Annexation Agreement, however, was *not* part of a conveyance of title from Waterford to Plaintiff POA (or anyone else) as required by *Myers, supra*. The facts of *Myers* are on point. In that case, property owners A entered into a contract with neighbor B, restricting the development of A’s property. There was no conveyance as part of the agreement. Owners A later sold their property to C, who sought a declaratory judgment that the restriction did not run with the land and did not bind C. The Georgia Supreme Court held that the contract did not run with the land and

did not restrict the use of the land by C: “This ‘contract’ was not part of a conveyance of any interest in the land. The covenants were not real but personal and were collateral to the land. There was no privity of estate between the covenantors [property owners A] and the defendants [neighbor B]. The defendants never owned the acreage or bought or sold any interest in it which is necessary in order to create a covenant running with the land.” 226 Ga. at 25.

As in *Myers*, Waterford did not convey any property to Plaintiff POA (or anyone else) as part of the Annexation Agreement. As in *Myers*, Plaintiff POA never held title in the Waterford Property, over which Plaintiff POA claims a restriction. Therefore, pursuant to *Myers*, in the absence of any conveyance to (or from) Plaintiff POA, the Annexation Agreement was a personal contract between Plaintiff POA and Waterford and does not run with the land. *Myers*, 226 Ga. at 25.

Although Plaintiff POA correctly asserts that the Annexation Agreement recites that it “runs with the land,” a mere recital does not satisfy the requirement that a conveyance accompany the alleged restrictive covenant. *See Copelan*, 249 Ga. at 278. Likewise, the recordation of the Annexation Agreement without an accompanying conveyance of title does not transform the Annexation Agreement into a covenant running with the land. *See Copelan*, 249 Ga. at 277. In the absence of a conveyance, the density compliance provisions of the Annexation Agreement remained a personal contractual obligation only between the original parties to the agreement and only for 20 years as to the property annexed during that time. BC Holdings was not a party to that contract. It did not agree to be bound to personal contractual obligations therein.

Regarding BCC, it does not own any interest in the remaining Waterford property. Only BC Holdings does. There is no allegation that BCC has acquired any of that property or is under contract to acquire it. Therefore, there is no issue in controversy for a declaratory judgment.

Further, even if BCC should acquire any such interest in the future, although BCC is a signatory to the now-expired Annexation Agreement, the agreement does not include any express restraints against BCC. And more specifically, nothing in the Annexation Agreement prohibits BCC from utilizing its unilateral right to annex property as provided in the Declarations (see footnote 1, *supra*). Nothing waives, surrenders, amends or modifies that right. If the parties had intended such a restraint or alteration to this unilateral right of BCC, the parties were required to include such expressly and unambiguously in the document. *See SPI Holdco*, 361 Ga. App. at 457. The absence of those terms means there is no such restraint or alteration. *See Roth*, 235 Ga. App. at 867.

Finally, because BC Holdings is not bound by the Annexation Agreement, the Annexation Agreement cannot impose restrictions on BCC's right to acquire or annex BC Holdings' property. Prohibiting BCC from annexing BC Holdings' property effectively prohibits BC Holdings from obtaining annexation. It would subject BC Holdings to the (alleged) restraint of the Annexation Agreement even though BC Holdings is not bound by the agreement. It would restrict BC Holdings' right of alienation: BC Holdings would not have the unfettered right to convey its property to BCC and have the property annexed into the Big Canoe community. Plaintiff POA would be achieving by the back door what it could not achieve by the front door, establishing a de facto permanent restrictive covenant where none existed.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court dismiss with prejudice the Plaintiff POA's Complaint for failure to state a claim upon which relief can be granted.

This 7th day of August, 2026.

/s/ Edward D. Burch, Jr.

Edward D. Burch, Jr.

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/s/ John R. Grimes

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(Signed by EDB with express permission)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day filed the foregoing **DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS** electronically with the Clerk of Court using PeachCourt, which will send email notification of such filing to counsel of record.

This 7th day of August, 2026.

/s/ Edward D. Burch, Jr.

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Counsel for Defendant

Exhibit 1

State of Georgia



COUNTY OF PICKENS OFFICE OF THE CLERK OF SUPERIOR COURT

ELECTRONIC DOCUMENT CERTIFICATION

Certification Date: 08/07/26

Book Reference: 139 390-437

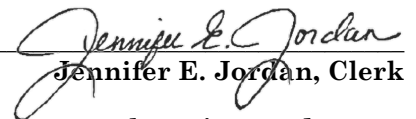
Authentication Code: 4BVDQ-QWXDB-Q3UH

Number of Pages: 49

I, **Jennifer E. Jordan**, Clerk of Superior Court, or Deputy Clerk specified below, hereby certify that the attached page(s) is/are a true and correct copy of the document(s) enumerated herein, and that said document(s) are on file as a part of the official records of this office, of which I am the official custodian, as authorized by Georgia law. Witness my hand and official seal of this office on the date written.



Official Seal of Clerk


Jennifer E. Jordan, Clerk

Stephannie Henderson

Prepared by:

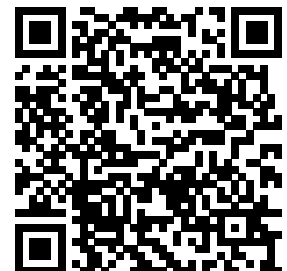
INSTRUCTIONS FOR AUTHENTICATING THIS CERTIFICATION

This electronically certified record can be authenticated as having been duly certified by the issuing officer by accessing the link below:

<https://ecert.gsccca.org/document/4BVDQ-QWXDB-Q3UH>

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 Lien BK 445 pg 126

THIS AMENDED AND RESTATED GENERAL DECLARATION, executed this day of March, 1988, by BIG CANOE PROPERTY OWNERS' ASSOCIATION, INC., a Georgia corporation, hereinafter called "Association" and BIG CANOE COMPANY, a Georgia partnership composed of The Byrne Corporation of Georgia, a Georgia corporation, and Patten Corporation of Big Canoe, a Georgia corporation, hereinafter called "Company" to be effective thirty (30) days after the date of the recording of this Amended and Restated General Declaration.

WITNESSETH:

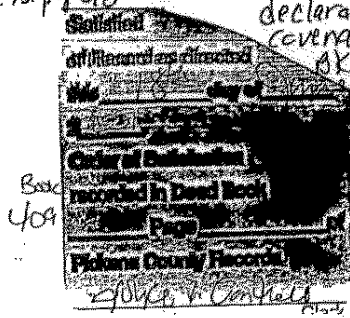
WHEREAS, Company is the successor in title to The Byrne Corporation of Georgia which was the successor in title to Southeast Holding Company, Ltd. d/b/a Big Canoe Company which was formerly known as Big Canoe Corporation (the last named entity hereafter referred to as Company's Predecessor in Title and all of Company's Predecessors being hereinafter referred to as "Company's Predecessors in Title"), which was the owner of the real property described in ARTICLE II of this Declaration, and as such undertook the creation of a planned unit development community known as Big Canoe, with certain facilities, amenities and services for the use and benefit of all property owners within said community; and

WHEREAS, it was and is Company's desire and the desire of Company's Predecessors in Title to provide for the preservation of the values and amenities and for the maintenance of common facilities, services and properties, and, to this end, to subject the real property described in ARTICLE II, together with such additions as may hereafter be made, as provided in ARTICLE II, to the covenants, restrictions, easements, affirmative obligations, charges and liens, hereinafter set forth, each and all of which are and are hereby declared to be for the benefit of said property and each and every owner of any and all parts thereof; and

WHEREAS, Company's Predecessor in Title, Big Canoe Corporation, deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which could be delegated and assigned the power and authority of maintaining and administering the common properties and services and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter set forth; and

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EASE 1003/330
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WD 1030/785
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SD 1062/494
WD 1062/515
WD 1080/468
WD 1080/491
WD 1080/508
COVE 1081/341
SD 1085/975
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QCD 1134/425
WD 1147/764
ASGN 1147/856
CNDO 1157/873
NOT 1160/884
NOT 1160/919
CANC 1161/411
COVE 1170/655
COVE 1256/17
EASE 1286/295
COVE 1350/854
MISC 1355/278
EASE 1379/173
EASE 1392/880
EASE 1396/232
EASE 1400/594
EASE 1438/173
COVE 1466/815
COVE 1467/123
CANC CL14/738
CANC CL20/241
LIEN CL28/96
LIEN CL28/97
LIEN CL28/98
LIEN CL28/136
LIEN CL28/137
CANC CL28/529
LIEN CL29/148
CANC CL29/232
CANC CL29/580
LIEN CL33/637
LIEN CL33/638
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WHEREAS, Company's Predecessor in Title, Big Canoe Corporation, caused to be incorporated under the laws of the State of Georgia a non-profit corporation, Big Canoe Property Owners' Association, Inc., for the purpose of exercising the functions aforesaid, and which are hereafter more fully set forth; and

WHEREAS, Company's Predecessor in Title, Big Canoe Corporation, previously caused certain covenants and restrictions to be established affecting Big Canoe entitled "General Declaration of Covenants and Restrictions of the Big Canoe Property Owners' Association and Big Canoe Corporation," dated October 9, 1972 (hereinafter called the "Declaration"), which is recorded in Deed Book 23, pages 162-198, Office of the Superior Court Clerk, Pickens County, Georgia, and in Deed Book 19, pages 253-289, Office of the Superior Court Clerk, Dawson County, Georgia, as supplemented by (a) certain Class "A" Covenants for Single Family Detached Dwelling Areas, dated October 9, 1972, recorded in Deed Book 23, pages 198-208, Office of the Superior Court Clerk, Pickens County, Georgia, and in Deed Book 19, pages 290-300, Office of the Superior Court Clerk, Dawson County, Georgia, and (b) certain Class "B" Covenants for Multi-Family Tracts, dated June 20, 1973, recorded in Deed Book 27, page 24, Office of the Superior Court Clerk, Pickens County, Georgia; and

WHEREAS, as of January 20, 1979, the Declaration was amended in certain respects, which Amendment is recorded in Deed Book 59, pages 793-802, Office of the Superior Court Clerk, Pickens County, Georgia, and at Deed Book 47, pages 169-178, Office of the Superior Court Clerk, Dawson County, Georgia; and

WHEREAS, as of October 29, 1983, the Declaration was amended in certain respects, which Amendment is recorded in Deed Book 94, pages 707-708, Office of the Superior Court Clerk, Pickens County, Georgia, and at Deed Book 69, pages 616-617, Office of the Superior Court Clerk, Dawson County, Georgia; and

WHEREAS, as of December 31, 1985, the Declaration was amended in certain respects, which Amendment is recorded in Deed Book 113, pages 54-56, Office of the Superior Court Clerk, Pickens County, Georgia, and at Deed Book 86, pages 622-624, Office of the Superior Court Clerk, Dawson County, Georgia; and

WHEREAS, as of December 31, 1985, there was executed and delivered a document entitled "Second Amendment to General Declaration of Covenants and Restrictions of the Big Canoe Property Owners' Association and Big Canoe Property," which is recorded at Deed Book 112, pages 28-29, Office of the Superior Court Clerk, Pickens County, Georgia. Said Amendment was erroneously labeled the "Second Amendment" and should have been labeled the "Fourth Amendment"; and

WHEREAS, as of December 31, 1985, there was executed and delivered a document entitled "Fourth Amendment to General

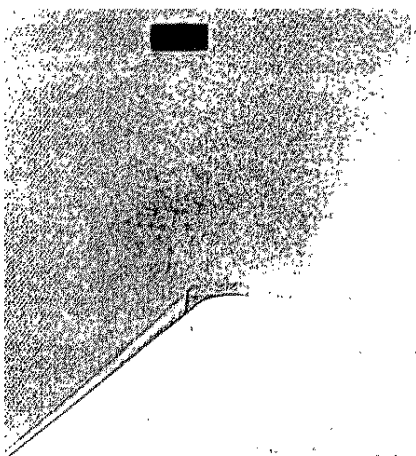
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Declaration of Covenants and Restrictions of the Big Canoe Property Owners' Association and Big Canoe Company" which Amendment is recorded in Deed Book 113, pages 680-683, Office of the Superior Court Clerk, Pickens County, Georgia, and at Deed Book 87, pages 33-36, Office of the Superior Court Clerk, Dawson County, Georgia; and

WHEREAS, as of May 14, 1987, the Declaration was amended in certain respects, which Amendment is entitled "Fifth Amendment to General Declaration of Covenants and Restrictions of the Big Canoe Property Owners' Association and Big Canoe Company," and is recorded in Deed Book 126, pages 528-542, Office of the Superior Court Clerk, Pickens County, Georgia, and at Deed Book 99, pages 97-111, Office of the Superior Court Clerk, Dawson County, Georgia; and

WHEREAS, pursuant to the General Declaration, as previously amended as aforesaid, and pursuant to the By-Laws of the Association, the Association and the Company did, at a duly called meeting on March __, 1988, present to the Members of the Association the question of adopting the text of the within Amended and Restated General Declaration for the purposes of integrating all previous amendments into one updated and readable document and the members of the Association approved said Amended and Restated Declaration to be effective thirty (30) days after the recordation thereof, and said Amended and Restated General Declaration is set forth hereinafter. As it relates to said amendments consisting of the said Amended and Restated Declaration, the date of the meeting of the Association at which such amendments were adopted was March __, 1988; the date that notice of such meeting was given was February __, 1988; the total number of votes of Members of the Association eligible to vote at said meeting was ____; the total number of votes required to constitute a quorum at the meeting of the Association was ____; the total number of votes necessary to adopt the Amended and Restated General Declaration was ____; and the total number of votes cast against the Amended and Restated General Declaration was _____. Pursuant to the actions of the Association as aforesaid, this Amended and Restated General Declaration shall be recorded forthwith in the Office of Real Estate Records of Dawson and Pickens Counties, Georgia, and shall become effective thirty (30) days after the date of such recordation.

NOW, THEREFORE, Company and the Association declare and reaffirm that the real property described in ARTICLE II and such additions thereto as may hereafter be made pursuant to ARTICLE II hereof, is and shall be held, pursuant to ARTICLE II hereof, and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens (hereinafter sometimes referred to as the "Covenants") hereinafter set forth.



ARTICLE I

DEFINITIONS:

Section 1. The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- (a) "Association" shall mean and refer to the Big Canoe Property Owners' Association, Inc., a Georgia non-profit corporation.
- (b) "Properties" or "Big Canoe" shall mean and refer to the real property described in ARTICLE II hereof, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions of ARTICLE II hereof.
- (c) "Common Properties" shall mean and refer to those tracts of land and any improvements thereon which are deeded or leased to the Association and designated in said deed or lease as "Common Properties" provided, however, "Common Properties" shall only include (i) land and improvements deeded to the Association in that certain Limited Warranty Deed dated December 31, 1985, from Southeast Holding Company, Ltd., Company's Predecessor in Title, to the Association, which deed is recorded in Deed Book 87, Page 37, Dawson County, Georgia, Records and in Deed Book 112, Page 30, Pickens County, Georgia, Records, as amended by that certain Amendment to Limited Warranty Deed dated as of January 1, 1987, from Southeast Holding Company, Ltd., Company's Predecessor in Title, to the Association, and as modified by that certain Limited Warranty Deed dated as of January 1, 1987, from the Association to Southeast Holding Company, Ltd., Company's Predecessor in Title; (ii) such land and improvements as are conveyed to the Association pursuant to and in accordance with Section 4 of ARTICLE IV of this Declaration; and (iii) any personal property acquired by the Association if said property is designated as "Common Property." All Common Properties are to be devoted to and intended for the common use and enjoyment of the owners, their families, guests of the owners, persons occupying dwelling places or accommodations of owners on a guest or tenant basis, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association; provided, however, that any lands which are leased

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by the Association for use as Common Properties, shall lose their character as Common Properties upon the expiration of such lease.

- (d) "Family Dwelling Unit" shall mean and refer to any improved property intended for use as a single-family or multi-family, attached or detached, dwelling, condominium unit, townhouse unit, or apartment unit located within the Properties. A Family Dwelling Unit shall be deemed to exist only after certification of completion of the improvements by the Board of Directors of the Association.
- (e) "Residential Lot" or "Lot" shall mean any unimproved parcel of land located within the Properties, with the exception of the Common Properties which is intended for use as a site for a single-family detached dwelling shown upon any recorded final subdivision map of any part of the Properties.
- (f) "Multi-Family Tract" shall mean any unimproved parcel of land located within the Properties except for Common Properties intended for use as a site for cluster housing, multi-family dwellings including, but not limited to, condominium regimes, townhouses or apartments.
- (g) "Public and Commercial Site" shall mean any unimproved parcel of land within the Properties, with the exception of Common Properties, intended for use as a site for improvements designed to accommodate commercial or business enterprises to serve residents and guests of Big Canoe and/or the public, including, but not limited to, business and professional offices, facilities for the retail sale of goods and services, banks and other financial institutions, places of worship, community, civic, social, and cultural clubs and centers, libraries, nursery and other schools, schools of special instruction, medical centers, hospitals, clinics, nursing care, rest and convalescent homes, charitable institutions, restaurants, hotels, motels, inns, theaters, lounges, recreational facilities, marinas, transportation terminals or stations, automobile parking facilities and gasoline stations; provided, however, that a "Public and Commercial Site" shall not include property upon which improvements are to be built which also qualify as a Multi-Family Tract.

(h) (1) "Public and Commercial Unit" shall mean and include any improved parcel of land within the Properties, with the exception of Common Properties, which are intended and designed to accommodate public, commercial or business enterprises to serve residents and guests of Big Canoe and/or the public, including, but not limited to, all those enterprises enumerated in subparagraph (g) immediately above. A Public and Commercial Unit shall be deemed to exist only after certification of completion of the improvements by the Board of Directors of the Association.

(2) The Company may develop Public and Commercial Units as described in subsections 1(g) and 1(h)(1) on any property which the Company now owns or may acquire which is not now within the boundaries of the property referred to as the Currently Covenanted Property at Big Canoe and also may develop such Public and Commercial Units on property within the Currently Covenanted Property which lies on the west side of Steve Tate Highway provided such development shall be contained in a tract of land which fronts on the west side of Steve Tate Highway which tract shall have a distance/depth back from Steve Tate Highway of not to exceed seven hundred feet (700'). Said tract shall also be located no closer than one thousand feet (1000') from any entrance to the Currently Covenanted Property. Any such Public and Commercial Units will be constructed and developed in such a manner as not to detract from the natural setting of Big Canoe and its environs and must be approved under usual Architectural Review Board Procedures.

(3) Public and Commercial Units will be permitted in the Currently Covenanted Property only as provided in subsection (h)(2) above and this subsection (h)(3). The Company may provide an inn or inns and a restaurant or restaurants within the Currently Covenanted Property and inn guests shall have guest privileges to the use of the Common Properties as provided in Section 5 of ARTICLE IV of this Declaration. Restaurant guests may at their discretion shop at any inns or other small Public and Commercial Units as hereinafter described but shall not have the use of the Common Properties (other than roads for ingress and egress and parking areas) except as a guest of a Type "A" or Type "B" Owner or as a marketing guest of the Company in its capacity as a Type "D" Owner. The types of Public and Commercial Units which shall be permitted are ventures which are

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"need driven" which are supported and draw their customer base from the residents and guests of Big Canoe and which are not dependent for their economic viability on the admission of members of the general public. The Company shall determine the need and nature of such Public and Commercial Units and the rights of the Association shall be limited to denying access to the public on determination of a majority of the Non-Developer Directors as defined in the By-laws of the Association except for access to any inns or restaurants.

- (i) "Owner" shall mean and refer to the Owner as shown by the real estate records in the Office of the Clerk of the Superior Court for Dawson and/or Pickens Counties, Georgia, whether it be one or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site or Public and Commercial Unit situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee or holder of a security deed, its successors or assigns, unless and until such mortgagee or holder of a security deed has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure and has held such title for a period of one year; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the Office of the Clerk of Superior Court for Dawson and/or Pickens Counties, Georgia, a long-term contract of sale covering any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond nine (9) months from the date of the contract and where the purchaser does not receive title to the property until such payments are made although the purchaser is given the use of said property.
- (j) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Section 1 of ARTICLE III hereof.
- (k) "Company" shall mean Big Canoe Company, a Georgia partnership composed of The Byrne Corporation of Georgia (a Georgia corporation) and Patten Corporation of Big Canoe (a Georgia corporation), its

successors and assigns. The Company shall have all of the rights, privileges and immunities as the Developer under this Declaration and under the Articles and By-Laws of the Association and shall have the right to transfer and assign its rights, privileges and immunities as the Company and the Developer by the execution and delivery of a written assignment (which assignment may be included in a deed) and recordation of the same in the Deed Books of each County in which any portion of the Properties are located, provided that the transferee of said rights, privileges and immunities shall expressly assume in said written document all duties, obligations, responsibilities and liabilities of the Company as the Developer under this Declaration and the Articles and By-laws of the Association arising from and after the date of said transfer. No such transfer or assignment by the Company shall relieve the transferor of or from any duties, obligations or liabilities that shall have accrued prior to said transfer, but said transferor shall not be responsible for any duties, obligations or liabilities of the Company as the Developer accruing subsequent to said transfer. It is expressly understood that at any given time there can be only one Company and one Developer which must be the same entity and any purported or attempted transfer or assignment of less than all of the rights, privileges and immunities of the Company or the Developer shall be null and void, *ab initio*, it being expressly understood that any assignment of the rights, privileges or immunities of the Company under this Declaration or the Developer under the Articles or By-laws of the Association, in order to be legally valid, binding and enforceable must be a transfer and assignment of all of said rights, privileges and immunities and must include a written assumption of all duties, obligations, responsibilities and liabilities of the Company under this Declaration and under the Articles and By-laws of the Association arising from and after the date of said transfer. Nothing contained in this subsection shall be interpreted as limiting the right of the Company, in its capacity as the Developer while it is a "Type D" Member, to delegate from time to time to other persons or entities the benefit of specific rights, privileges and immunities to which it is entitled, for example, the delegation of said benefits to wholly-owned subsidiaries, guests, invitees and contractors of the Company.

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- (l) "Intended for use" shall mean the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which the Company or its Predecessors in Title have conveyed the property.
- (m) "Affiliate" shall mean any corporation more than fifty percent (50%) of the voting stock of which is owned or controlled by the Company, and any partnership or joint venture in which the Company has more than a fifty percent (50%) proprietary interest.
- (n) "Neighborhood Area" shall mean any one of the named residential communities within Big Canoe as represented by a plat or plats thereof recorded by Company or its Predecessors in Title in the Office of the Clerk of Superior Court in Dawson and/or Pickens Counties, Georgia.
- (o) "Neighborhood Tract" shall mean that portion of any plat of a Neighborhood Area, recorded by Company or its Predecessors in Title in the Office of the Clerk of Superior Court in Dawson and/or Pickens Counties, Georgia, which is designated as an open area or green belt and is generally accessible to Owners.
- (p) "Limited Common Properties" shall mean that a portion of any plat of a Neighborhood Area, recorded by Company or its Predecessors in Title in the Office of the Clerk of Superior Court in Dawson and/or Pickens Counties, Georgia, which is designated as an open area or green belt and which is not generally accessible to all Owners, it being limited to the use of those owners of lots immediately contiguous thereof.
- (q) "Deed of Declaration" shall mean that document, and all additions thereto, entitled "Deed of Declaration," recorded by Company or its Predecessors in Title in the Office of the Clerk of Superior Court in Dawson and/or Pickens Counties, Georgia, and which document shall establish certain easements, licenses, rights and privileges in the Owners, upon the terms more specifically set out therein, to the property described therein and which property shall specifically include the rights-of-way within a private road system for Big Canoe.
- (r) "Maximum Annual Assessment" shall mean those amounts as described in Section 3 of ARTICLE VI hereof and in no event shall said term include any

user's fees charged in connection with the direct use of facilities within the Properties or any charges to Owners within a Neighborhood Area for construction, operation and maintenance of a Neighborhood Tract.

- (s) "Currently Covenanted Property" shall have the meaning as set forth in Section 1.1 of ARTICLE II.

ARTICLE II

Section 1. The Properties. The real property which is, and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these covenants is described as follows:

All that tract or parcel of land situated, lying and being in Dawson and/or Pickens Counties, Georgia, containing approximately five thousand four hundred (5400) acres which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

The Company's Predecessors in Title have begun development and the Company intends to continue to develop the Properties in accordance with a master plan on display in its reception and sales office and other areas. The Company reserves the right to review and modify the master plan at its sole option from time to time. The master plan shall not bind the Company, its successors and assigns, to adhere to said plan in development of the land shown thereon. Subject to its right to modify the master plan as stated herein, the Company shall convey to the Association properties designated to be conveyed to the Association as provided in Section 4 of ARTICLE IV hereof. Once conveyed to the Association, these properties shall become Common Properties. The Company shall not be required to follow any predetermined sequence or order of improvements and developments; and it may bring within these covenants additional lands and develop the same before completion of the development of the Properties. The Company shall have the full power to add to, subtract from, or make changes in, the master plan regardless of the fact that such actions may alter the relative voting strength of the various types of membership of the Association.

Section 1.1. Currently Covenanted Property. Currently Covenanted Property shall mean that portion of Big Canoe which is subject to the Declaration on January 1, 1987, together with any other property subsequently added thereto which becomes subject to the Declaration and which is located west of Steve Tate Highway in Land Lots 271, 272, 305, 306, 307 and 308 of the Fifth District, Second Section, Dawson County, Georgia, and Land Lots 17, 18, 19, 20, 21, 22, 55, 56 and 57 of the Fourth District, Second Section, Pickens County, Georgia.

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Section 2. Additions to the Properties. Additional lands including but not limited to approximately four thousand (4000) acres now or formerly owned by Company or its predecessors in title may become subject to this Declaration in the following manner:

- (a) Additions. The Company, its successors and assigns, shall have the right, without further consent of the Association to bring within the plan and operation of this Declaration, additional properties. The additions authorized under this and the succeeding subsection shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Company, to reflect the different character, if any, of the added properties, but such modifications shall have no effect on the Property described in Section 1, ARTICLE II, above.

- (b) Other Additions. Upon approval in writing of the Association pursuant to three-fourths (3/4) of the vote of those present at a duly called meeting, the Owner of any property who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may file or record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient in the judgment of the Association to reflect the different character, if any, of the added properties, but such modifications shall have no effect on the property described in Section 1, ARTICLE II, above.

- (c) Mergers. Upon a merger or consolidation of the Association with another association as provided for in the By-Laws of the Association, its Properties, rights and obligations may, by operation

of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the Properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties, together with the covenants and restrictions established upon any other properties as one plan. Except as hereinafter provided, no such merger or consolidation shall effect any revocation, change of, or addition to, the covenants established by this Declaration within the existing Properties.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:

Section 1. Membership. Every Owner shall be a Member of the Association. The Company shall be a Member of the Association.

Section 2. Voting Rights. The Association shall have four (4) types of voting membership:

TYPE "A" - Type "A" Members shall be all those Owners of the Residential Lots and Family Dwelling Units with the exception of the Company (except as set forth under Type "D" membership provisions below). A Type "A" Member shall be entitled to two (2) votes for each Family Dwelling Unit which he owns. An Owner of a Residential Lot upon which a Family Dwelling Unit has not been constructed shall be entitled to one (1) vote for each Residential Lot which he owns. It is the intent of this provision that so long as property qualifies as a Residential Lot by virtue of the fact that improvements have not been constructed thereon, the Owner thereof shall have only one (1) vote, but once improvements are constructed on said Lot and it loses its character as a Residential Lot and becomes a Family Dwelling Unit, the Owner thereof shall have a total of two (2) votes for the ownership of such property.

TYPE "B" - Type "B" Members shall be all those Owners of Multi-Family Tracts with the exception of the Company (except as set forth under Type "D" membership provisions below). A Type "B" Member shall be entitled to one (1) vote for each one-half (1/2) of an acre of area contained in the Multi-Family Tract(s) which such Type "B" Members own; provided, however, that in computing the number of votes such Member shall have, the area contained in such property shall be rounded off to the nearest one-half (1/2) of an acre.

TYPE "C" - Type "C" Members shall be only those Owners of Public and Commercial Units permitted under subsections 1(h)(2) and 1(h)(3) of ARTICLE I hereof with the exception of the Company (except as set forth under Type "D" membership provisions below). A Type "C" Member shall be entitled to one (1) vote for each 1500 square feet of area covered by a roof, or similarly protected from the elements (this shall hereafter be called "covered area") contained in the Public and Commercial Unit which he owns; provided, however, that in computing the number of votes such an Owner shall have the square footage of such covered area rounded off to the nearest 1500 square feet.

TYPE "D" - The Type "D" Member shall be the Company. The Type "D" Member shall be entitled to the same number of votes as cumulatively held by all Type "A," "B," and "C" Members plus one (1), provided that Type "D" membership shall cease at such time as the Company has less than five percent (5%) of the total number of votes held by all Members of the Association excluding the votes of the Company as a Type "D" Member and computing the Company's votes as a Type "A," "B," and/or "C" Member depending upon the type of property owned by the Company at such time. [Any provisions herein to the contrary notwithstanding at such time as Type "D" membership ceases to exist, the Company shall become a Type "A," "B," and/or "C" Member depending upon the type of property owned by the Company at such time.] The abolition of Type "D" membership shall be evidenced by written notice to the Association and recording a certified copy of said notice in the real estate records of Dawson and/or Pickens Counties, Georgia.

When any property entitling the Owner to membership as a Type "A," "B" or "C" Member of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, tenants in common, tenants in partnership or in any other manner of common ownership, or of two (2) or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, their acts with respect to voting shall have the following effect:

- (1) if only one votes, in person or by proxy, his act binds all;
- (2) if more than one votes, in person or by proxy, the act of the majority so voting binds all;
- (3) if more than one votes in person or by proxy, but the vote is evenly split on any particular matter (each fraction shall be entitled its proportionate share of the vote or votes);

- (4) if the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or even-split for purposes of this paragraph shall be a majority or even-split in interest;
- (5) the principles of this paragraph shall apply, but not be limited to, insofar as possible, execution of proxies, waivers, consents or objections for the purpose of ascertaining the presence of a quorum.

The voting rights of any Owner may be assigned by said Owner to his lessee who has entered into a lease with a term of two (2) years or more; provided, however, that the Owner may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee. The Type "A," "B," "C" and "D" Members are sometimes hereinafter collectively referred to as the "Members."

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES:

Section 1. Members' Easements of Enjoyment in Common Properties. Subject to the provisions of these covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Type "A," "B," "C" and "D" Member and every tenant and guest of such Type "A," "B," "C" and "D" Member shall have an easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Residential Lot, Family Dwelling Unit, Multi-Family Tract, permitted Public and Commercial Unit. Except as to the rights granted in subsections 1(h)(1), 1(h)(2) and 1(h)(3) of ARTICLE I and Sections 5 and 6 of ARTICLE IV, the aforesaid easement granted to guests and tenants of nine (9) months or less of Members to use and enjoy the Common Properties (but not an easement to use the roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use) may be denied to or withdrawn from such guests or tenants of nine (9) months or less by an affirmative vote of seventy-five percent (75%) of the votes cast at a duly called meeting of the Association.

Section 2. Easements Established by Deed of Declaration. The Company's Predecessors in Title have conveyed to the Association by Deed of Declaration upon the terms and conditions set out therein a private road system, wilderness valley and Lake Petit and Lake Disharoon all as shown by plats thereof recorded by the Company's Predecessors in Title in the real estate records of Dawson and/or Pickens Counties, Georgia. The Company covenants for itself, its successors and assigns, that it shall convey to the Association by Deed of Declaration, upon terms and conditions set out therein, appropriate additions to the open

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space and the private road system as they are completed from time to time.

Section 3. Extent of Members' Easements. The easement of use and enjoyment created hereby shall be subject to the following:

- (a) the right of the Company and of the Association, in accordance with its By-Laws, to borrow money from the Company or any other lender for the purpose of improving and/or maintaining the Common Properties and providing the services authorized herein and in aid thereof to mortgage said properties; and
- (b) the right of the Association to assume and pay any liens or encumbrances against the property at the time of conveyance; and
- (c) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures; and
- (d) subject to the rules and regulations of the Association and the rights of the Association, as provided in its By-laws, to suspend the rights and easements of enjoyment of any Member or any tenant of any Member for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment, and provided that the Association shall not suspend the right to use the roads belonging to the Association subject to the rules and regulations, if any, established by the Association for such use. Should the Association be required to employ an attorney to collect any assessment, it shall be entitled to collect in addition thereto all costs of collection including reasonable attorney's fees; and
- (e) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties and/or facilities thereon; and
- (f) the Board of Directors of the Association shall have the power to place any reasonable restrictions upon the use of the roadways now or hereafter to be conveyed by the Company to the

Association, including, but not limited to, the types and sizes of vehicles using said roads, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of any state or local government having jurisdictions over the Properties shall not make such restrictions unreasonable; and

- (g) the rights of the Company or the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility easements on any part of the Common Properties; and
- (h) the right of the Association to give or sell all or any part of the Common Properties including leasehold interests to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedication, transfers and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting for the Association and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership; and
- (i) the rights of reversion of the lessor of any Common Properties leased by the Association upon expiration of the lease.

Section 4. Acquisition of Properties by the Association. Subsequent to May 14, 1987, the Association shall have no obligation to purchase or accept a conveyance of any properties from the Company other than (a) as specified in Section 1 of ARTICLE VII hereof; (b) as shall be approved by both the Company and a majority vote of the Non-Developer Directors (as defined in

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the By-laws of the Association) of the Association; and (c) as may be required under the terms and conditions of that certain Amenity Agreement between Southeast Holding Company, Ltd., as Company's Predecessor in Title and the Association dated May 14, 1987. Under no circumstances shall the Company have the right to require the Association to lease any property from the Company. The Company shall have the right, in its sole discretion, to construct, from time to time, improvements, including, without limitation, additional recreational amenities, on properties owned from time to time by the Company and to restrict the use of said improvements to such persons or entities as the Company, in its sole discretion, may determine, from time to time. The Company shall have no obligation to use any of the recreational amenities owned from time to time by the Association or any other Common Properties.

Section 5. Use of Common Properties by the Company.
Subject to the terms and conditions in this Section 5, the Company, its successors and assigns, shall have the right to use all of the Common Properties for any guests and invitees of the Company, including, without limitation, marketing guests, provided that said guests and invitees shall be obligated to pay user fees but shall not be obligated to pay any more than the daily or "per use" user rates, if any, as the daily or "per use" user rates charged to other Owners and guests or invitees of other Owners, and, except as expressly provided herein, the Association shall not, without the consent of the Company, directly or indirectly, treat the guests or invitees, including, without limitation, any marketing guests of any one class of Owners any differently from the manner in which the guests or invitees of any other class of Owners are treated. In the event the Association, from time to time, establishes user rates for any of the Common Properties, the Association shall, as part of such user rates, at all times make available a rate based on daily or "per use" user basis. Any and all guests of any and all inns hereafter located at Big Canoe and any and all marketing guests of the Company shall have all the rights, privileges and immunities of individual Members of the Association as to the use of golf or racquet facilities as hereinafter provided in this Section 5. They shall also have the rights of guests of individual Members as to all other Common Properties. Provided, however, that marketing guests shall not have the right to operate any motor vehicles within any wilderness or natural preserve area unless accompanied by an employee of the Company or by another Member of the Association. The Association shall have the right, from time to time, to adopt and enforce restrictions on the admission to the Currently Covenanted Property of members of the general public and particularly as set forth in subsection 1(h)(3); provided, however, that the Association shall not have the right to prohibit or unreasonably interfere with the entry of members of the general public to the Currently Covenanted Property if said persons are entering for the purpose of using the facilities of any inns or restaurants now or hereafter located in the Currently Covenanted Property except that if said persons are

entering for the purpose of using the facilities of any of said restaurants, such persons shall not be entitled, in their capacity as customers of such restaurants, to use the Common Properties other than the roads for ingress and egress and parking areas in the Currently Covenanted Property. Notwithstanding any rule of the Association affecting the rights, generally, of guests and invitees of Owners to use any golf or racquet facilities (other than general playing rules, such as the minimum/maximum number of players at one time, the use of golf carts, etc. and the requirement to pay user fees), so long as the Company is a Type "D" Member of the Association, the Company shall be guaranteed the right, for itself and its guests and invitees, to use up to one-third (1/3) of all golf tee times and racquet playing times, spread proportionately among the times during each day. For example, as to those tee times available in any given hour during the day, one would be available to the Company and the next two out of each three in sequence would be available to other Owners. Notwithstanding any rule of the Association affecting the rights, generally, of guests and invitees of Owners to use any golf or racquet facilities (other than general playing rules, such as the minimum/maximum number of players at one time, the use of golf carts, etc., and the requirement to pay user fees), if an inn or inns are constructed by the Company or any successors or assigns of the Company, then, in such event, when the Company ceases to be a Type "D" Member of the Association, the owners of such inns shall be guaranteed the right for their guests and invitees to use golf tee times and racquet playing times, spread proportionately among the times during each day, in an amount equal to the average use of said golf and racquet facilities by the respective guests of any such inns over the last three-year (3-year) period immediately preceding the date when the Company ceased to be a Type "D" Member, up to but not to exceed a total for all inn guests of twenty percent (20%) of the available tee times and fifteen percent (15%) of the available racquet court times. Provided, however, that any times not reserved by the Company or the owners of any such inns on or before 5:00 p.m. of the day immediately preceding the day of use shall be made available for general use by all Owners, including, without limitation, the Company and their guests and invitees on a first come/first served basis (the foregoing golf and racquet rights are herein-after referred to collectively as the "Reserved Amenities Rights"). Notwithstanding the foregoing, the annual and weekly Members of the Golf Club shall have priority starting times on weekends and holidays from 8:00 a.m. to 9:00 a.m., or such other dates and times as shall be approved by a majority of both the Developer and Non-Developer Directors of the Association, from time to time. The Company shall have the right to delegate from time to time all or any portion of the Reserved Amenities Rights to the owners of any such inns. In the event of any inconsistency between the foregoing provisions of this Section 5 with any other provisions of this Declaration, the Articles of the Association or the By-Laws of the Association, as any of the same may be amended from time to time, the provisions of this Section 5 shall prevail.

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Section 6. Additions to Properties. The Company shall have the right to develop additional lands as set forth in Section 2 of ARTICLE II and may develop or permit to be developed Public and Commercial Units as described in Subsections 1(g) and 1(h)(1) on such lands. In the event such lands other than Currently Covenanted Property are developed and brought within this Declaration, the Association shall not be required to accept conveyances of any property other than as provided in Section 1 of ARTICLE VII of this Declaration. Any Public and Commercial Units constructed on such lands shall not be subject to Association assessments nor shall the owners or guests of such Public and Commercial Units be or have the rights of Members of the Association. In the event paved roads in such additional properties are conveyed to the Association, the public shall have free and unimpeded access over said roadways to whatever Public and Commercial Units may be built on said lands, subject to the reasonable and non-discriminatory traffic rules and regulations of the Association. These rights of the public for ingress and egress shall remain so long as there are any such Public and Commercial Units and shall not be subject to withdrawal or modification by amendment to this Declaration. Notwithstanding the foregoing, if such additional lands are brought within this Declaration and any inns or restaurants are developed thereon, it or they shall be considered as an inn or restaurant and shall be subject to the same rights, privileges and restrictions applicable to inns and restaurants as contained in Section 5 of ARTICLE IV hereof.

Section 7. Development of Big Canoe. The Association and the Owners recognize that the continued development of Big Canoe and the continued operation of the Common Properties in a first class manner are in the best interests of all Owners, both present and future. Accordingly, the Association shall maintain, manage and operate all of the Common Properties in a manner comparable to the maintenance, management and operation of common properties and amenities located at other mixed-use developments of a size, character and quality similar to Big Canoe. Further, the Association shall maintain, manage and operate all of the Common Properties in such a manner as not unreasonably to interfere with the rights of the Company, its successors and assigns, to own, use, operate, develop, construct, maintain, market and sell properties at Big Canoe, or the rights of any Owner, including the Company, to use any of the Common Properties from time to time subject to general playing rules such as the minimum/maximum number of players at one time, the use of golf carts, etc., and the requirement to pay reasonable user fees.

ARTICLE V

CONSTRUCTION OF NEIGHBORHOOD FACILITIES:

Section 1. Application by Owners. Upon written request of eighty percent (80%) of the Owners of property within a Neighborhood Area (or to an organization formed to receive fee

title or leasehold estate), a Neighborhood Tract from the Common Properties located in such area to be used for the purpose set out in Section 2 below.

Section 2. Use Restrictions. Any tract conveyed or leased pursuant to the provisions of Section 1 immediately above shall be used for the purposes approved by the Board of Directors of the Association and such use shall not be violative of the provisions of this Declaration.

Section 3. Reversion of Title. Should any tract conveyed or leased to the Owners under the provision of this ARTICLE V cease to be used for the purposes approved by the Board of Directors of the Association, title to such tract shall revert to the Association. Such reversion shall become effective upon the filing in the Office of the Clerk of the Superior Court for the county within which the tract is located a certified copy of a resolution of the Board of Directors of the Association stating that the approved use had been abandoned or materially altered. The instrument by which a tract is conveyed or leased to Owners within a "Neighborhood Area" shall contain covenants which restrict the tract to the use approved by the Board of Directors of the Association and shall provide for the reversion of the title to the property or the termination of the lease upon the approved use being abandoned or materially changed.

Section 4. Architectural Control. All improvements to be erected on a Neighborhood Tract shall be submitted to the Company or the Architectural Control Board as provided for in Section 1 of ARTICLE VIII of this Declaration.

Section 5. Costs of Land, Improvements and Maintenance. The Association shall make no charge for conveying or leasing of Neighborhood Tracts pursuant to these provisions. However, the construction, maintenance and operation of improvements thereon shall be at the sole expense of the Owners within each Neighborhood Area containing a Neighborhood Tract. The Association, as agent for Owners, shall collect funds from such Owners within such Neighborhood Area, which funds shall be placed in an escrow account and used by the Association to pay for the expense of construction, maintenance and operation of improvements on such Neighborhood Tract. The Association shall be responsible for establishing the method of collecting such funds. Notwithstanding anything in these Declarations to the contrary, the collection of such funds from the Owners within such Neighborhood Area shall be in addition to the obligation of such Owners to pay the Maximum Annual Assessment, special assessments and user's fees.

Section 6. Maintenance Performed by the Association. The Association or the Company shall have the right, but not the duty, to enter upon any Neighborhood Tract for the purpose of abating any unclean, unsightly or unkept conditions or grounds which tend to substantially decrease the beauty of the

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neighborhood as a whole or the specific area. The costs of such abatement and any damages resulting from such entry shall be at the expense of the Owners within the Neighborhood Area and shall not be deemed a trespass. Any costs to such Owners may be paid from the escrow account described in Section 5 of this ARTICLE V to the extent funds are available therein.

ARTICLE VI

COVENANTS FOR MAINTENANCE ASSESSMENTS:

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Company covenants, and each Owner shall by acceptance of a deed, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (1) annual assessments or charges; and (2) special assessments or charges for the purposes set forth in Section 4 of this ARTICLE, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site or Public and Commercial Unit, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Should the Association be required to employ an attorney to collect any assessment, it shall be entitled to collect in addition thereto all costs of collection including reasonable attorney's fees.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the acquisition, improvement, maintenance, and operation of the Common Properties and to pay for services which the Association is authorized to provide, including, but not limited to, the payment of taxes and insurance thereon, construction of improvements, repairs, replacement, and additions to Common Properties, payment of the costs of labor, equipment, materials, management and supervision necessary to carry out its authorized functions, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized functions, including mortgages covering Common Properties at the time of conveyance to the Association.

The special assessments shall be used for the purposes set forth in Section 4 of this ARTICLE.

Notwithstanding the levy of annual or special assessments as aforesaid, the Company and/or the Association shall be entitled to charge a user's fee for facilities within the Properties owned or operated or built at the expense of the Company and/or the Association. Such fees shall include, by way of illustration and not by way of limitation, greens fees, boat rentals, fishing fees, and tennis court rentals.

Section 3. Basis and Maximum for Annual Assessments. Except as otherwise provided herein, the initial annual assessments shall not be more than the sums calculated in accordance with the following schedule:

Annual Assessment
Period Beginning
January 1, 1979

CLASS A

- | | | |
|----|----------------------|----------|
| 1) | Residential Lot | \$600.00 |
| 2) | Family Dwelling Unit | \$804.00 |

CLASS B

- | | | |
|----|----------------------------|-------------------|
| 1) | Multi-Family Tract | \$625.00 per acre |
| 2) | Public and Commercial Site | \$625.00 per acre |

Except as set forth below, the assessment of Public and Commercial Sites approved by the Company for use as a site for a church, hospital, school or buildings owned by a non-profit institution shall be computed at the rate of \$ 12.50 per acre

CLASS C

- | | | |
|----|-----------------------------|--|
| 1) | Public and Commercial Unit. | |
|----|-----------------------------|--|

In addition to the assessment on the Public and Commercial Site, the assessment for a Public and Commercial Unit shall be calculated on the basis of the gross square footage of the heated area of such unit at the rate of \$.63 per square foot

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In addition to the assessment on the Public and Commercial Site, the assessment of Public and Commercial Units which are churches, hospitals, schools, or buildings owned and used by non-profit institutions shall be calculated at the rate of \$.13 per square foot

CLASS D

1) Company

All acreage belonging to the Company contained within the Properties shall be assessed at the annual rate of \$12.50 per acre. All land owned by the Company within the Properties shall be classified as acreage until such time as a plat is recorded in the Office of the Clerk of Superior Court for Dawson and/or Pickens Counties, Georgia, subdividing into separate lots any portion of the Company's land. After the date of such filing, the property shown on said plat shall be assessed on the basis of whatever category of assessable property it falls into; provided, however, that there shall be an exception for Residential Lots, and the Company shall continue to be assessed on a per acre basis on Residential Lots at the rate of \$12.50, notwithstanding the recording of any plat or plats subdividing any portion of the Company's land. The property described in Section 11 of this ARTICLE VI shall be exempt from the acreage owned by the Company upon which it is assessed.

All assessments charged by the Association shall be rounded off to the nearest ONE AND NO/100 DOLLAR (\$1.00).

From and after January 1, 1979, the Maximum Annual Assessment (for calendar years subsequent to 1979) as applied to all classes of Members considered together may be increased each year by the Board of Directors of the Association by an amount not in excess of the larger of (a) six percent (6%) per year, or (b) the percentage increase between the first month and the last month of an annual assessment period in the Consumer Price Index, U.S. City Average, All Items (1967=100) (hereafter "C.P.I.") issued by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas," whichever of these two percentage figures is larger, unless three-fourths (3/4) of the votes cast at a duly called meeting of the Association votes against such increase or

votes to increase said annual assessment by a greater amount or to decrease the Maximum Annual Assessment. Subsequent to January 1, 1979, the maximum annual increase in assessment shall be on a cumulative basis. (That the Maximum Annual Assessment may be increased on a cumulative basis shall mean that for the particular year subsequent to the calendar year 1979, the Maximum Annual Assessment may be increased by an amount equal to the maximum annual increase permissible for any preceding calendar year(s) minus the actual increase for any preceding calendar year(s), and the permissible increase for any preceding calendar year(s) shall be calculated as if each such preceding calendar year(s) had been increased by the maximum annual increase for all preceding year(s), plus the maximum annual increase permissible for such particular year.) In the event that the C.P.I. referred to above shall be discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

Any increase or decrease in the Annual Maximum Assessment shall be made in such a manner that the proportionate increase or decrease in such Maximum Annual Assessment is the same for Type "A," "B," "C" and "D" Members and likewise, any time the actual assessment levied by the Board of Directors of the Association is less than the Maximum Annual Assessment, any such decrease shall be apportioned among the Type "A," "B," "C" and "D" Members. Increases in proportionate payments of the Maximum Annual Assessment borne by any particular class of membership in the Association may be altered only by the favorable vote of ninety percent (90%) of the vote cast at a duly called meeting of the class of membership whose proportionate share is being altered. However, this provision shall not prevent the Company from altering its proportionate share of the Maximum Annual Assessment as provided in Section 2 of ARTICLE IX hereof.

The Board of Directors of the Association may, after consideration of current costs and future needs of the Association, fix the annual assessment for any year at an amount less than the applicable Maximum Annual Assessment, but such action shall not constitute a waiver by the Association of its right to revert to the full cumulative assessment in subsequent years. However, if the Board of Directors fixes such annual assessment at an amount less than the maximum and it is subsequently determined by the Board that the amount assessed will not be sufficient, the Board shall have the power to make a supplemental annual assessment, but in no event shall the sum of the initial and supplemental annual assessments in any one (1) year exceed the applicable cumulative maximum.

Section 4. Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy special assessments, for the purpose of defraying in whole or in part the costs of any construction or reconstruction, unexpected maintenance or repair

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and replacement of the Common Properties and capital improvements thereon, if any, including the necessary fixtures and personal property related thereto, or addition to the Common Properties, or to provide for the necessary facilities and equipment to offer the services authorized herein, and to repay any loan made to the Association to enable it to perform the duties and functions authorized herein, provided that any such assessment shall have the assent of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. The proportion of each special assessment to be paid by the Owners of the various classifications of assessable property shall be equal to the sum of the total applicable maximum assessments for all property in that class for the year during which such special assessment is approved expressed as a percentage of the sum of the total applicable maximum assessment for all property within the Properties for the year during which such assessment is approved. Such special assessments in any one (1) year may not exceed a sum equal to the amount of the Maximum Annual Assessment for such year except for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss. This provision shall be interpreted to mean that the Association may make in any one (1) year an annual assessment up to the maximums set forth in Section 3 of this ARTICLE, plus an additional special assessment, which additional assessment being considered alone may not exceed the amount set for the Maximum Annual Assessment. The fact that the Association has made an annual assessment for any amount up to the permitted maximum and/or has adjusted proportionate payments between the classes as permitted herein shall not effect its right to also make a special assessment during the year.

Section 5. Change in Basis and Maximum of Annual Assessments Upon Merger or Consolidation. The limitations of Section 3 hereof shall apply to any merger or consolidation in which the Association is authorized to participate under ARTICLE II, Section 2, hereof, and under the By-laws of the Association.

Section 6. Quorum for any Action Authorized Under this ARTICLE. The quorum required for any action authorized to be taken by the Association Members under this ARTICLE shall be as follows:

The first time any meeting of the Members of the Association is called to take action under this ARTICLE, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, a second meeting may be called subject to the giving of property notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast fifty percent (50%) of the total vote of the membership of the Association.

Section 7. Date of Commencement and Proration of Annual Assessments. Due Date. The annual assessments shall be fixed on a calendar year basis and shall be due and payable monthly in advance commencing January first of each year. Owner shall commence payment of the assessment on the first day of the month following the date of closing. Payment of the assessment shall be past due thirty (30) days after the date of billing. The Board of Directors of the Association may, in its discretion, permit such discount, if any, as it may from time to time establish for Members who pay their annual assessments in advance on an annual or quarterly basis.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment. All assessments shall be based on the status and classification of property on January 1 of each year but shall be adjusted for improvements completed during the year, as of the date of completion of such improvements.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the assessment against each Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site or Public and Commercial Unit for each assessment period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

The Association shall within three (3) days after written request therefor furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

The Board of Directors shall establish a set of rules for determining when construction has been substantially completed so that property shall be classified as improved property for purposes of assessment and voting rights.

The Board of Directors shall establish a schedule of fees to be charged for the admission to and use of the Common Properties and/or the facilities thereon.

Section 9. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessment is not paid on or before the past due date specified in Section 7 hereof, then such assessment shall become delinquent and shall, together with interest thereon at a rate established from time to time by resolution of the Board of Directors of the Association and costs of collection thereof, be a charge and continuing lien on the real property and all improvements thereon, against which each such assessment is

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made, in the hands of the then-Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner at the time when the assessment first became due and payable to pay such assessment, however, shall remain his personal obligation and shall not pass as a personal obligation to his successor in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the past due date, the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage, security deed or deed of trust hereafter placed upon the properties subject to assessment if, but only if, all assessments and charges with respect to such lot authorized herein and having a due date prior to the date such mortgage is filed for record have been paid. The liens and charges hereby subordinated shall apply only to the assessments which have become due and payable subsequent to the date such mortgage is filed for record and prior to the satisfaction, cancellation of the sale or transfer of such property pursuant to a decree of foreclosure, sale under power, or any other proceeding or deed in lieu of foreclosure. Any such sale or transfer as part of a foreclosure proceeding shall not relieve such property from liability for any assessments accruing after conveyance by the mortgagee to a subsequent owner; provided, however, that the mortgagee who purchases the property at such foreclosure proceeding shall not be liable for assessments until it has held title to the property for one (1) year.

Section 11. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

- (a) the grantee in conveyances made for the purpose of granting utility easements;
- (b) all Common Properties as defined in ARTICLE 1, Section 1, hereof;
- (c) property owned and operated by the Company or an affiliate of the Company which is used for any of the following purposes:
 - 1) road rights-of-way and parking lots;

- 2) utilities, community halls, meeting rooms, educational facilities, maintenance and equipment storage areas, and offices of the Company.

Section 12. Waiver of Assessments. The Board of Directors of the Association may, at its discretion, waive assessments due on such institutions as churches, schools and other non-profit charitable organizations.

ARTICLE VII

FUNCTIONS OF ASSOCIATION:

Section 1. Ownership and Maintenance of Common Properties. In the event that the Company shall offer to convey to the Association, at no charge, real or personal property to be owned and maintained as Common Properties, the Association shall be required to accept said conveyances if the Properties are devoted to the following uses:

- (a) for entrance areas, roads or roadways, and parkways along said roads or roadways throughout the Properties;
- (b) for sidewalks, walking paths or trails, bicycle paths, and bridle paths throughout the Properties;
- (c) for police and fire protection including police stations, maintenance buildings and/or guardhouses, police equipment and fire stations and fire-fighting equipment; and buildings used in maintenance functions;
- (d) for emergency health care including ambulances and emergency care medical facilities and equipment necessary to operate such facilities;
- (e) for lakes, play fields, historic parks, wildlife areas, ball fields, playgrounds, community common parks, nature preserves, historic sites, water courses, green belts, common green areas and community meeting facilities;

Provided, however, that the Association shall not be required subsequent to January 1, 2000, to accept any conveyances of said properties, other than paved roads and common green areas, if said properties were constructed on Currently Covenanted Property; and the Association shall not be required subsequent to April 1, 1987, to accept

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any conveyances of said properties, other than paved roads and common green areas, if said properties are constructed on land that is not Currently Covenanted Property but is then subject to this Declaration as otherwise provided herein.

Section 2. Services. The Association shall be authorized, but not required, to provide the following services:

- (a) landscaping of roads and parkways, sidewalks and walking paths and any other Common Properties;
- (b) lighting of roads, sidewalks and walking paths throughout the Properties;
- (c) police protection and security, including but not limited to the employment of police and security guards, maintenance of electronic and other security devices, and control centers for the protection of persons and property within the Properties, and assistance in the apprehension and prosecution of persons who violate the laws of Georgia within the Properties;
- (d) fire protection and prevention;
- (e) garbage and trash collection and disposal;
- (f) insect and pest control to the extent that it is necessary to supplement the service provided by the state and local governments;
- (g) to take any and all actions necessary to enforce all covenants and restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Properties;
- (h) to set up and operate an architectural review board in the event that the Association is designated by the Company as the agent of the Company for such purpose;
- (i) improvement of fresh water fishing available to Members within the Properties;
- (j) to conduct recreation, sport, craft, and cultural programs of interest to Members, their children and guests;

- (k) to maintain a water search and rescue boat for the protection and safety of those in the large bodies of waters located on the Properties;
- (l) to provide safety equipment for storm emergencies;
- (m) to maintain a general library and collection of historical objects and documents pertaining to the Properties;
- (n) to support the operation of transportation services between key points within the properties and the airports, other public transportation terminals and public centers serving the areas surrounding the Properties;
- (o) to provide special entertainment and festivals;
- (p) to construct improvements on Common Properties for use for any of the purposes authorized in Section 1 of this ARTICLE, or as may be required to provide the services as authorized in this Section 2 of this ARTICLE;
- (q) to provide administrative services, including but not limited to, legal, auditing, accounting and financial support, incident to the above-listed services;
- (r) to provide liability and hazard insurance covering improvements and activities on the Common Properties.

Section 3. Obligation of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified in Sections 1 and 2 of this ARTICLE. The functions and services which are carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized but not required to carry out or offer may be added to or reduced at any time upon the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association; provided, however, that the functions and services authorized and/or rendered by the Association may be reduced by the Board of Directors of the Association and may also be changed by merger or consolidation of the Association pursuant to ARTICLE II, Section 2, hereof and the By-laws of the Association.

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Section 4. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions.

ARTICLE VIII

GENERAL LIMITATIONS:

Section 1. Architectural Control. No Family Dwelling Unit, Public and Commercial Unit, garage, carport, playhouse, fence, wall, swimming pool, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to any existing structure or change or alteration therein, nor shall any landscaping or site work be done until complete final plans and specifications therefor showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location and floor plan therefor, and showing front, side, and rear elevations thereof, respectfully, in the name of the builder and/or landscaper have been submitted to and approved by the Company, its agents, successors or assigns, as to harmony of exterior design and general quality with the standards of the Neighborhood Area, and Big Canoe, generally, and as to location in relation to surrounding structures and topography.

If the Company fails to approve or disapprove such plans and specifications within forty-five (45) days after receipt of written notice that such plans and specifications have been submitted to it and approval requested, the Company shall be deemed to have approved said plans and specifications.

Refusal of approval of plans, specifications, builder, landscaper, or location may be based upon any grounds including purely aesthetic considerations which, in the sole and uncontrolled discretion of the Company or its agent, shall be deemed sufficient.

Any builder or any landscaper, prior to performing any work on the Properties, must be approved by the Company as to financial stability, building or landscaping experience, and ability to build or landscape structures or grounds of the class and type of those which are to be built on the Properties. No person, firm, or entity shall be approved as a builder or landscaper unless such person, firm, or entity obtains his income primarily from construction or landscaping of the type which builder or landscaper is to perform upon the Properties. No Owner will be permitted to act as his own builder or contractor for the exterior of any structure, except where such Owner obtains his income primarily from the construction of the type of structure to be constructed upon the Properties, and otherwise

meets the qualifications for approval by the Company as hereinabove set forth.

The Company may, at any time, and from time to time, delegate or assign to the Association, in whole or in part, its rights and authorities granted by this Section 1 of this ARTICLE VIII. Any right or authority so delegated or assigned to the Association may be exercised as the Board of Directors of the Association may determine. In the event that the Company shall at any time delegate or assign to the Association, in whole or in part, its rights and authorities granted by this Section 1 of this ARTICLE VIII, the Company shall have the right at any time thereafter and from time to time to reclaim, in whole or in part, said rights and authorities by rescinding in writing such delegation or assignment to the Association, whereupon said rights and authorities shall, by virtue of said notice, be fully vested again in the Company; provided, however, that at such time when the Company no longer qualifies as a Type "D" Member of the Association, the Association shall automatically assume all rights, powers and privileges of the Company set forth in this Section 1.

In the event any Owner violates the terms of this Section 1 of ARTICLE VIII, the Company, or its duly appointed agent, shall, after thirty (30) days' written notice to Owner to cure such violation and failure of Owner to so cure, be entitled to enter upon the property of Owner and cure such defect including removal of any structure built in violation hereof, all at the cost and expense of Owner. This right of the Company, or its agent, shall be in addition to all other general enforcement rights which the Company or the Association may have for a breach or a violation of the terms of these covenants and restrictions and shall not be deemed a trespass by Company or its agent.

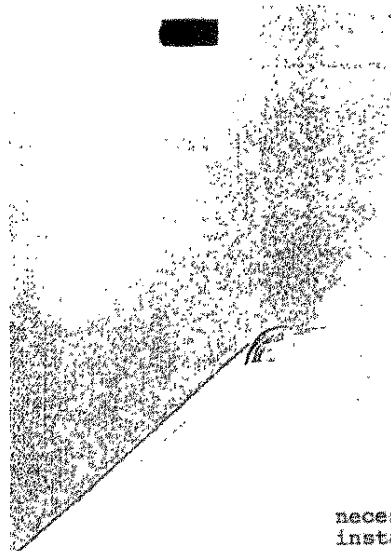
Section 2. Restrictions on Use and Rights of The Company and Association.

- (a) It is the responsibility of each Owner to prevent any unclean, unsightly, or unkept conditions of buildings or grounds on the Owner's property which shall tend to substantially decrease the beauty of the Neighborhood Area specifically, and Big Canoe as a whole.
- (b) No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any Neighborhood Area, or Big Canoe.
- (c) Except as otherwise permitted herein, or in supplementary declarations hereto, no plants, animals, or device or thing of any sort whose

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normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other property in Big Canoe by the Owners, tenants and guests thereof, be maintained.

- (d) Hunting and trapping of wild animals, fowl, and game is hereby prohibited within the Properties, and the discharge of firearms and/or bows and arrows within the Properties for any purpose shall not be allowed; provided, however, that target shooting of firearms and/or bows and arrows may be permitted as part of a recreational activity supervised by the Association. The provisions of this paragraph shall not prohibit the Company and/or the Association from instituting wildlife population control programs which may include the use of firearms, bows and arrows, and/or traps.
- (e) Each Owner shall provide receptacles for garbage, and all garbage receptacles, tools and equipment for use on the property of the Owner or otherwise, shall be placed in a fenced area in accordance with reasonable standards established by the Company or the Association to shield same from general visibility from roads abutting the Owner's property.
- (f) The Company reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over, and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, C.A.T.V., security cable equipment, telephone equipment, gas, sewer, water or other private or public convenience or utilities, on, in or over the rear ten feet (10') of each lot, and ten feet (10') along one side of each lot, and such other areas as are shown on the applicable plats; provided, further, that the Company may cut, at its own expense, drainways for surface water wherever and whenever such action may appear to the Company to be necessary in order to maintain reasonable standards of health, safety and appearance. In the event of the combination or the subdivision by the Company as provided in subparagraph (g) of this Section 2 of ARTICLE VIII, of one (1) or more Lots, the easements created hereby shall exist on the resulting Lot(s). These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, take any grains of the soil, or to take any other similar action reasonably



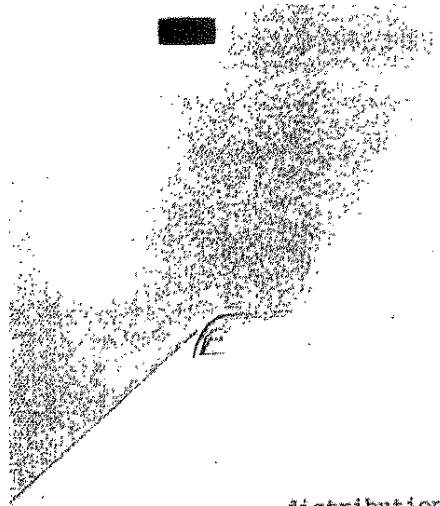
necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance.

- (g) In addition, the Company reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on and over and under the Properties to dispense pesticides and take other action which in the opinion of the Company is necessary or desirable to control insects and vermin, to cut fire breaks and other activities which in the opinion of the Company are necessary to control fires on the Properties, or any improvements thereon.
- (h) The Company further reserves the right to locate wells, pumping stations and tanks within any portion of the Properties; provided, however, that should the Owner of any portion of the Properties upon which such pumping station, well or tank shall be located is other than the Company, or the Association, and the applicable recorded plat of such Owner's property does not designate such property for use as aforesaid, then such pumping station, tank or well shall not be located upon such Owner's property without the permission of such Owner. Such rights may be exercised by any licensee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.
- (i) Prior to the occupancy of any portion of the Properties for either residential or commercial use, proper and suitable provisions shall be made for the disposal of sewage by means of a septic tank or tanks constructed on such Lot for disposal of all sewage, and no sewage shall be emptied or discharged into any creek, river, lake, or shoreline thereof. No sewage disposal system shall be used unless such system is designed, located, constructed and maintained in accordance with the requirements, standards and recommendations of the Company and appropriate Public Health Authority. Approval of such systems shall be obtained from such authority after the completion of said system, and prior to the use of the system. Each septic tank shall be maintained in good condition so that its use and existence shall not constitute a nuisance to any other Owner.
- (j) No structure of a temporary character shall be placed upon any portion of the Properties at any time, provided, however, that this prohibition

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shall not apply to shelter used by contractors during the construction of any Family Dwelling Unit or Public and Commercial Unit, or the Company, or the Association. It being clearly understood that temporary shelters, tents, recreational vehicles, etc., may not at any time be used as temporary or permanent residences or commercial facilities or be permitted to remain on any portion of the Properties after completion of construction thereon.

- (k) The Owners of Lots fronting on a lake, stream, or other waterway, or on an open space area separating the Lot from such waterway, will not be permitted to erect or maintain a private dock, dam or other similar structure on such waterway.
- (l) No boat, canoe or other watercraft shall be operated upon any lake, stream or other waterway within the Properties if such boat, canoe or other watercraft shall be propelled by an internal combustion engine or any other form of motorized operation which may discharge liquids or gases into the water. No boat, canoe or other watercraft shall be beached or stored overnight or permanently on the shore of any lake, stream or other waterway except within areas designed by the Company or the Association. Anything to the contrary notwithstanding, the Company and/or the Association shall be entitled to maintain any form of motorized watercraft for the specific purpose of search and rescue.
- (m) No outdoor fire shall be built within the Common Properties except in areas designated by the Company or the Association.
- (n) No fuel tanks or similar storage receptacles may be exposed to view, and such storage receptacle may be installed only within the main dwelling house, within an accessory building, within the fenced area required in subparagraph (d) above, or buried underground.
- (o) No private wells may be drilled or maintained on any residential or commercial lot, so long as the Company, its licensee, agents, successors or assigns, plans a water distribution line within fifty feet (50') of such lot within the right-of-way of the abutting private road with an average daily water pressure in such line adequate for normal residential or commercial use respectively in the dwelling served by such distribution line; provided, further, that such water



distribution line must be completed within five (5) days from the date of completion of such residence or commercial building, or a private well may be drilled by the Owner of such Lot.

- (p) No trees measuring six inches (6") or more in diameter at a point two feet (2') above ground level, any flowering trees or shrubs, nor any evergreens may be removed without the written approval of the Company, unless located within ten feet (10') of a building, within ten feet (10') of the approved site for such building, or within the right-of-way of driveways and walkways. Excepted herefrom shall be damaged trees or trees which must be removed because of an emergency.
- (q) No Residential Lot's boundary lines shall be changed subsequent to the recording of a plat thereof by the Company in Dawson and/or Pickens Counties, Georgia, except with the written consent of the Company. However, the Company hereby expressly reserves unto itself, its successors or assigns, the right to replat any Lot or Lots shown on said recorded plat of any Neighborhood Area in order to create a modified building lot or lots, and to take such other steps as are reasonably necessary to make such replatted lot suitable and fit as a building site to include, but not be limited to, the relocation of easements, walkways, rights-of-way, roads, bridges, parks, recreational facilities and other amenities to conform to the new boundaries of said replatted lots, provided that no Lot originally shown on a recorded plat is reduced to a size more than ten percent (10%) smaller than the smallest Lot shown on the first plat of the Neighborhood area recorded in the aforesaid records.
- (r) Pursuant to its overall program of wildlife conservation and nature study, the Company expressly reserves the right to designate certain areas of the Properties as areas upon which no building shall take place and within these areas to erect wildlife feeding stations, to plant small patches of cover and food crops for quail, turkeys and other wildlife, to make access trails or paths through such areas for the purpose of permitting observation and study of wildlife, hiking and riding to erect small signs throughout such areas designating points of particular interest and attraction, and to take such other steps as are reasonable, necessary and properly further the aims of such areas, and community use and enjoyment thereof.

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- (s) In addition to the rights as specified in subsection (f) of this Section 2 of this ARTICLE VIII, the Company and/or the Association shall have the right to protect from erosion the land designated as areas upon which residential or commercial building shall take place by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by the Company and/or the Association to provide and insure against said erosion.
- (t) No leaves, trash, garbage or other similar debris shall be burned except as permitted by the Company and/or the Association.
- (u) No television antenna, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any structure or any Lot or Common Properties within the Properties; provided, however, that the provisions of this paragraph shall not apply to the Company and/or the Association for the installation of equipment necessary for a C.A.T.V. and mobile radio systems within the Properties.
- (v) No trash, garbage, construction debris or other unsightly or offensive material shall be placed upon any portion of the Properties, except as is temporary and incidental to the bona fide improvement of said area of the Properties.

ARTICLE IX

MISCELLANEOUS PROVISIONS:

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Company or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a period of twenty-five (25) years from the 9th day of October, 1972. Upon the expiration of said twenty-five-year (25-year) period, this Declaration shall be automatically renewed and extended upon the expiration of each ten-year (10-year) renewal period for an additional ten-year (10-year) period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty-five-year (25-year) period, or during the last year of any subsequent ten-year (10-year) renewal period, three-fourths (3/4) of the votes cast at a duly held meeting of the Association vote in favor of terminating this Declaration at the end of its then-current term. It shall be required that

written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Official Real Estate Records for Dawson and Pickens Counties, Georgia, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendments. This Declaration can be amended at any time provided that three-fourths (3/4) of the votes cast at a duly called meeting of the Association votes in favor of the proposed Amendment including three-fourths (3/4) of the votes cast by any one (1) of the four (4) types of voting memberships to the extent that said proposed amendment would have a material adverse effect on the rights, privileges or interests of such type of Members relative to the rights, privileges or interests of the other types of Members. Notice shall be given each Member at least fifteen (15) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the President and Secretary of the Association shall execute an Amendment to this Declaration which shall set forth the amendment, the effective date of the Amendment which in no event shall be less than thirty (30) days after the date of recording the Amendment, the date of the meeting of the Association at which such Amendment was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt the Amendment, the total number of votes cast against the Amendment. Such Amendment shall be recorded in the Official Real Estate Records for Dawson and Pickens Counties, Georgia.

In addition to the other rights of the Company as set forth herein, the Company may unilaterally amend this Declaration for the following purposes:

- (a) to lessen the number of vote which the Type "D" Member shall have in proportion to the number of votes of all other Members of the Association;

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- (b) to provide that the Type "D" Member shall not vote for certain seats on the Board of Directors and that these seats shall be filled exclusively by the vote of Type "A," "B" and "C" Members;
 - (c) to increase the amount of the annual assessment due by the Company to the Association;
 - (d) for any other purpose which requires a greater contribution by the Company to the Association or which lessens the role of the Company in the operation of the Association and increases the role of the other Members;
 - (e) from time to time to supplement these General Covenants and Restrictions with supplemental covenants and restrictions entitled to either Class "A," "B," or "C" covenants which supplemental Class "A," "B," or "C" covenants shall apply to certain specified Neighborhood Areas and which as to such Neighborhood Areas may be more restrictive than these General Covenants and Restrictions; provided, however, that such supplemental covenants and restrictions shall not bind, without the consent of the then-Owner thereto, any portion of the Properties which have previously been sold by the Company and a deed evidencing such sale has been recorded in the Official Real Estate Records of Dawson and/or Pickens Counties, Georgia;

Section 3. Notices. Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed to the last known address of the person or entity who appears as Owner in the public records of Dawson and/or Pickens Counties, Georgia, on the first day of the calendar month in which said notice is mailed. Notice to one (1) of two (2) or more co-owners of a Residential Lot, Family Dwelling Unit, Multi-Family Tract, Public and Commercial Site or Public and Commercial Unit shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes an Owner and Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or by any

appropriate proceeding at law or equity against the land to enforce any lien created by these Covenants. Owner hereby waives any trial by jury in any action or proceeding brought by Company or the Association to enforce any of the covenants or restrictions contained herein. Further, Owner will not interpose any counterclaim, except compulsory counterclaims, in any proceeding brought by Company or the Association to enforce any of these covenants or restrictions. The remedies given to Company and/or the Association herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude Company or the Association's rights to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, reservation, restrictions, or condition contained in this Declaration, however long continued, shall not be deemed a waiver of this right so to do hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or effect its enforcement. Any person entitled to file a legal action for the violation of these Covenants shall be entitled to recover reasonable attorney's fees as a part of such action.

Section 5. Severability. Should any covenant or restriction herein contained, or any ARTICLE, Section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise effect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 6. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions and to construe and interpret its provisions, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this General Declaration of Covenants and Restrictions shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

Section 7. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the By-laws of the Association, unless the terms of this instrument provide otherwise.

Section 8. Termination of Association. In the event that this Declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by

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the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10) years of the date of recording this Declaration, all Common Properties belonging to the Association at the time of such adjudication shall revert to the Company, and the Company shall own and operate said Common Properties as Trustee for the use and benefit of Owners within the Properties as set forth below. If said adjudication shall occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in ARTICLE VIII, Section 1, all Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Superior Court of Dawson or Pickens Counties, Georgia, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within the Properties as set forth below:

- (a) each Lot or parcel of land located within the Properties shall be subject to an annual assessment which shall be paid by the Owner of each such Lot or parcel to the Company or Trustee whichever becomes the successor in title to the Association. The amount of such annual assessment and its due date shall be determined solely by the Company or the Trustee, as the case may be, but the amount of such annual assessment on any particular Lot or parcel shall not exceed the amount actually assessed against the Lot or parcel in the last year that assessments were levied by the Association, subject to the adjustments set forth in subparagraph (b) immediately below;
- (b) the amount of the Maximum Annual Assessment which may be charged by the Company or Trustee hereunder on any particular Lot or parcel shall be automatically increased each year by either six percent (6%) or the percentage increase between the first month and the last month of the annual assessment period in the Consumer Price Index, U.S. City Average, All Items (1967=100) (hereafter "C.P.I.") issued by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas," whichever of these two percentage figures is larger. The actual amount of such increase in the Maximum Annual Assessment on a Lot or parcel shall equal the Maximum Annual Assessment on such Lot or parcel for the previous year multiplied by the larger of the two percentage factors set forth above. If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living;

- (c) any assessments together with interest thereon at the rate of eight percent (8%) per annum from the past due date and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time the annual assessment became past due, and it shall also constitute and become a charge and continuing lien on the Lot or parcel of land and all improvements thereon, against which the assessment has been made, in the hands of the then-Owner, his heirs, devisees, personal representatives and assigns;
- (d) the Company or the Trustee, as the case may be, shall be required to use the funds collected as annual assessments for the operation, maintenance, repair and upkeep of the Common Properties. The Company or Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided for. Neither the Company nor the Trustee shall have the obligation to provide for operation, maintenance, repair and upkeep of the Common Properties once the funds provided by the annual assessment have been exhausted;
- (e) the Company shall have the right to convey title to the Common Properties and to assign its rights and duties hereunder, provided that the transferee accepts such Common Properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby;
- (f) the Trustee shall have the power to dispose of the Common Properties free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by fifty percent (50%) of the Owners or in the alternative shall be found to be in the best interest of the Owners by the Superior Court of Dawson and Pickens Counties, Georgia. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Properties, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of the Common Properties, and the excess, if any, shall be distributed among the Owners, exclusive of the Trustee, in a proportion equal to the portion that the Maximum Annual Assessment on property owned by a particular Owner bears to the total Maximum Annual Assessments for all property located within the Properties.

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IN WITNESS WHEREOF, BIG CANOE COMPANY and BIG CANOE PROPERTY OWNERS' ASSOCIATION, INC. have caused this Amended and Restated General Declaration to be executed the day and year first above written pursuant to appropriate resolutions adopted on behalf of BIG CANOE COMPANY and appropriate action of the Members of the Association as hereinabove recited.

Signed, Sealed and Delivered
in the Presence of:

BIG CANOE COMPANY, a Georgia
Partnership

By: The Byrne Corporation of
Georgia, General Partner
[CORPORATE SEAL]

By: William J. Byrne

Attest: Robert C. Jolly

Peggy A. McMain
(Witness)

Lisa J. Thomason
(Notary Public) 6/27/88
[NOTARY SEAL]
[NOTARY STAMP] MY COMMISSION EXPIRES JULY 8, 1991

By: The Patten Corporation of Big
Canoe, General Partner
[CORPORATE SEAL]

By: L. J. Allen

Attest: Barbara B. Nolan

Marilyn L. Allen
(Witness)

Luann C. Spomer
(Notary Public) 7-2-93
[NOTARY SEAL]
[NOTARY STAMP]

By: Big Canoe Property Owners'
Association, Inc.
[CORPORATE SEAL]

By: Bice C. Hainwright

Attest: Michael M. Hainwright
Secretary

Peggy A. McMain
(Witness)

Lisa J. Thomason
(Notary Public) 6/23/88
[NOTARY SEAL]
[NOTARY STAMP] MY COMMISSION EXPIRES JULY 8, 1991

EXHIBIT A

BEGINNING at an iron bar located in the northwest corner of Land Lot 278; thence running north 89 degrees 40 minutes 45 seconds east along the north land lot of Land Lot 279 a distance of 2633.57 feet to a rock found in the northeast corner of Land Lot 278; thence running north 89 degrees 54 minutes 15 seconds east along the north land lot line of Land Lot 277 a distance of 2,271.49 feet to an iron pin; thence running south 00 degrees 45 minutes 45 seconds west a distance of 408.77 feet to a blue pipe and rocks found; thence running north 89 degrees 28 minutes 30 seconds east a distance of 16,166.80 feet to a blue pipe and rocks found on the east land lot of Land Lot 273; thence running south 00 degrees 54 minutes east along the east land lot line of Land Lot 273 a distance of 2,783.36 feet to an iron pin located on the southeast corner of said Land Lot 273; thence running south 00 degrees 16 minutes 30 seconds east along the east land lot line of Land Lot 304 a distance of 2,559.87 feet to an iron pin located in the southeast corner of Land Lot 304; thence running south 00 degrees 16 minutes 15 seconds east along the east land lot line of Land Lot 309 a distance of 2,577.13 feet to an iron pin located in the southeast corner of Land Lot 309; thence running south 00 degrees 29 minutes 30 seconds east a distance of 5,315.10 feet to an iron pin located on the south land lot line of Land Lot 22; thence running south 89 degrees 33 minutes west along the south land lot line of Land Lot 22 a distance of 1,442.67 feet to a red iron pin found in the southwest corner of Land Lot 22; thence running south 00 degrees 48 minutes 45 seconds west along the east land lot line of Land Lot 54 a distance of 2,634.77 feet to a red iron pin found in the southeast corner of Land Lot 54; thence running south 88 degrees 48 minutes 45 seconds east along the north land lot line of Land Lot 60 a distance of 967.87 feet to an iron pin which iron pin is located on the northwest right-of-way of Steve Tate Highway (which right-of-way is 100 feet); thence running south 49 degrees 40 minutes 45 seconds west along the northwest right-of-way of said Highway a distance of 817.50 feet to an iron pin; thence running southwesterly and southerly along the northwesterly and westerly right-of-way of said Highway and following the curvature thereof a distance of 744.92 feet to an iron pin (said curve having a chord distance of 719.89 feet on a magnetic bearing of south 23 degrees 49 minutes west); thence running south 02 degrees 02 minutes 30 seconds east along the west right-of-way of said Highway a distance of 420.0 feet to an iron pin; thence running southeasterly along the southwesterly right-of-way of said Highway and following the curvature thereof a distance of 595.21 feet to an iron pin (said curve having a chord distance of 592.84 feet on a magnetic bearing of south 10 degrees 54 minutes 15 seconds east); thence running south 19 degrees 45 minutes 45 seconds east along the southwesterly right-of-way of said Highway a distance of 310.0 feet to an iron pin; thence running southeasterly along the southwesterly right-of-way of said Highway and following the curvature thereof a distance of 597.75

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feet to an iron pin (said curve having a chord distance of 596.63 feet on a magnetic bearing of south 25 degrees 50 minutes east); thence running south 31 degrees 54 minutes 15 seconds east along the southwesterly right-of-way of said Highway a distance of 1,000.00 feet to an iron pin; thence running southerly along the westerly right-of-way of said Highway and following the curvature thereof a distance of 1,141.71 feet to an iron pin (said curve having a chord distance of 1,114.45 on a magnetic bearing of south 10 degrees 08 minutes 15 seconds east); thence running south 11 degrees 37 minutes 45 seconds west along the westerly right-of-way of said Highway a distance of 290.0 feet to an iron pin which iron pin is located on the south land lot line of Land Lot 93; thence running south 89 degrees 49 minutes 45 seconds west along the south land lot line of Land Lot 93 a distance of 1,232.98 feet to an iron pin located in the southwest corner of Land Lot 93; thence running south 89 degrees 44 minutes 30 seconds west along the south land lot line of Land Lot 92 a distance of 766.85 feet to an iron pin; thence running north 01 degree 26 minutes 30 seconds west a distance of 152.91 feet to an iron pin; thence running north 01 degree 26 minutes 30 seconds west a distance of 97.68 feet to a marked 14 inch oak; thence running north 77 degrees 21 minutes 30 seconds east a distance of 200.07 feet to an iron pin; thence running north 01 degree 27 minutes 30 seconds west a distance of 318.35 feet to an iron pin; thence running south 78 degrees 08 minutes 30 seconds west a distance of 503.30 feet to an iron pin; thence running south 62 degrees 11 minutes west a distance of 540.87 feet to a point located in the center of a road; thence running south 35 degrees 12 minutes east along the center line of said road a distance of 166.07 feet to a hub found in the center of said road; thence running south 55 degrees 49 minutes 45 seconds east a distance of 102.77 feet to a point in said road; thence running north 87 degrees 50 minutes east a distance of 61.85 feet to an iron pin; thence running south 11 degrees 12 minutes 45 seconds west a distance of 68.73 feet to an iron pin located on the south land lot line of Land Lot 92; thence running north 89 degrees 40 minutes 30 seconds west along the south land lot line of Land Lot 92 a distance of 1,487.75 feet to a yellow pipe found in the southeast corner of Land Lot 92; thence running north 89 degrees 00 minutes 30 seconds west along the south land lot line of Land Lot 91 a distance of 1,798.73 feet to an iron pin; thence running north 00 degrees 09 minutes 15 seconds east a distance of 455.20 feet to an iron pin located in the center of a dirt road; thence running northeasterly and northwesterly along the center line of said dirt road the following courses and distances; north 32 degrees 27 minutes 45 seconds east 50.0 feet; north 03 degrees 21 minutes 15 seconds east 50 feet; north 15 degrees 36 minutes 15 seconds west 172.18 feet; north 21 degrees 51 minutes 45 seconds west 50.0 feet; north 28 degrees 54 minutes 30 seconds west 50.0 feet; north 40 degrees 16 minutes west 50 feet; north 43 degrees 06 minutes west 728.92 feet; north 48 degrees 42 minutes west 147.19 feet; north 41 degrees 34 minutes 45 seconds west 136.09 feet; north 42 degrees 42 minutes 30 seconds west 357.50 feet and north 65 degrees 12 minutes 15 seconds west 210.0 feet; thence

running north 51 degrees 32 minutes 30 seconds east a distance of 557.89 feet to an iron pin located on the west land lot line of Land Lot 91; thence running north 01 degree 25 minutes 15 seconds west along the west land lot line of Land Lot 91 a distance of 347.48 feet to rocks found in the northwest corner of Land Lot 91; thence running north 00 degrees 20 minutes east along the west line of Land Lot 62 a distance of 2,741.1 feet to an iron pin located in the northwest corner of Land Lot 62; thence running north 89 degrees 32 minutes 45 seconds west along the south land lot line of Land Lot 52 a distance of 712.95 feet to an iron pin located on the northeast right-of-way of Civil Conservation Corps Road (which right-of-way is 40 feet); thence running northwesterly, northerly, westerly and northwesterly along the easterly, northerly and northeasterly right-of-way of said Road the following courses and distances; north 26 degrees 47 minutes 15 seconds west 132.36 feet; north 14 degrees 33 minutes 45 seconds west 83.78 feet; north 47 degrees 22 minutes 45 seconds west 120.89 feet; north 04 degrees 14 minutes 45 seconds west 172.61 feet; north 22 degrees 50 minutes 30 seconds east 312.83 feet; north 03 degrees 08 minutes 30 seconds west 210.70 feet; north 08 degrees 59 minutes 30 seconds east 129.08 feet; north 13 degrees 53 minutes 00 seconds east 137.35 feet; north 04 degrees 57 minutes 30 seconds west 120.14 feet; north 21 degrees 31 minutes 30 seconds west 136.93 feet; north 59 degrees 04 minutes 00 seconds west 111.37 feet; south 79 degrees 07 minutes 00 seconds west 222.11 feet; south 87 degrees 41 minutes 30 seconds west 146.58 feet; north 78 degrees 39 minutes 30 seconds west 169.29 feet; north 69 degrees 54 minutes 45 seconds west 109.36 feet; south 88 degrees 18 minutes 15 seconds west 190.78 feet; south 72 degrees 16 minutes 45 seconds west 189.97 feet; south 89 degrees 21 minutes 00 seconds west 113.17 feet; north 81 degrees 58 minutes 30 seconds west 158.92 feet; north 88 degrees 28 minutes 45 seconds west 106.46 feet; north 58 degrees 23 minutes 00 seconds west 92.41 feet; north 46 degrees 43 minutes 45 seconds west 106.59 feet; north 27 degrees 32 minutes 45 seconds west 120.89 feet; north 36 degrees 00 minutes 15 seconds west 178.13 feet; north 29 degrees 15 minutes 45 seconds west 177.24 feet; north 59 degrees 11 minutes 30 seconds west 117.08 feet; north 83 degrees 04 minutes 30 seconds west 142.93 feet; south 87 degrees 41 minutes 45 seconds west 93.06 feet; south 79 degrees 18 minutes 45 seconds west 298.50 feet; north 86 degrees 26 minutes 30 seconds west 156.37 feet; north 71 degrees 09 minutes 45 seconds west 139.84 feet; north 53 degrees 47 minutes 15 seconds west 128.17 feet; north 30 degrees 22 minutes 45 seconds west 138.59 feet; north 13 degrees 09 minutes 30 seconds west 97.46 feet; north 02 degrees 50 minutes 30 seconds west 332.56 feet; north 11 degrees 53 minutes 15 seconds west 160.68 feet; north 17 degrees 54 minutes 45 seconds west 151.06 feet; north 11 degrees 20 minutes 45 seconds west 136.23 feet; north 35 degrees 45 minutes 15 seconds west 130.03 feet; north 16 degrees 06 minutes 30 seconds west 74.21 feet; north 01 degree 49 minutes 15 seconds west 82.52 feet; north 30 degrees 32 minutes 00 seconds west 184.23 feet; north 12 degrees 38 minutes 30 seconds west 68.68 feet; north 22 degrees 53 minutes 15 seconds

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east 65.78 feet; north 23 degrees 46 minutes 30 seconds east 85.00 feet; north 21 degrees 49 minutes 45 seconds west 356.72 feet; north 02 degrees 04 minutes 30 seconds west 169.03 feet; north 45 degrees 07 minutes 15 seconds west 205.37 feet; north 18 degrees 13 minutes 15 seconds west 91.24 feet; north 76 degrees 08 minutes 30 seconds west 163.04 feet; north 66 degrees 44 minutes 00 seconds west 192.39 feet; north 72 degrees 32 minutes 45 seconds west 261.94 feet; south 81 degrees 32 minutes 00 seconds west 99.44 feet; north 70 degrees 19 minutes 00 seconds west 77.77 feet; and south 75 degrees 01 minute 00 seconds 87.67 feet to an iron pin located on the west land lot line of Land Lot 26; thence running north 02 degrees 28 minutes 30 seconds west along the west land lot line of Land Lot 26 a distance of 431.51 feet to an iron pin located in the northwest corner of Land Lot 26; thence running north 88 degrees 47 minutes west along the south land lot line of Land Lot 12 a distance of 934.40 feet to an iron pin located on the northeast right-of-way of the Civil Conservation Corps Road (which right-of-way is 40 feet); thence running northwesterly along the northeasterly right-of-way of said Road the following courses and distances; north 35 degrees 47 minutes 15 seconds west 18.52 feet; north 23 degrees 58 minutes 15 seconds west 147.18 feet; north 16 degrees 57 minutes 15 seconds west 164.58 feet; north 33 degrees 23 minutes 30 seconds west 117.74 feet; north 44 degrees 56 minutes 15 seconds west 143.93 feet; north 63 degrees 32 minutes 00 seconds west 152.93 feet; north 66 degrees 14 minutes 30 seconds west 102.64 feet; north 48 degrees 28 minutes 45 seconds west 165.38 feet; north 61 degrees 47 minutes 15 seconds west 87.77 feet; north 77 degrees 02 minutes 00 seconds west 72.52 feet; north 30 degrees 10 minutes 00 seconds west 47.31 feet; north 27 degrees 19 minutes 15 seconds west 56.53 feet; north 72 degrees 39 minutes 30 seconds west 65.88 feet; south 74 degrees 08 minutes 30 seconds west 66.25 feet; south 88 degrees 37 minutes 00 seconds west 216.06 feet; north 78 degrees 16 minutes 45 seconds west 164.32 feet; north 60 degrees 58 minutes 30 seconds west 133.29 feet; north 49 degrees 21 minutes 15 seconds west 166.06 feet; north 43 degrees 54 minutes 30 seconds west 180.34 feet; north 29 degrees 44 minutes 00 seconds west 83.05 feet; north 18 degrees 48 minutes 45 seconds west 69.97 feet; north 42 degrees 35 minutes 30 seconds west 74.22 feet; north 48 degrees 44 minutes 00 seconds west 118.29 feet; north 40 degrees 49 minutes 30 seconds west 146.57 feet; north 30 degrees 44 minutes 15 seconds west 195.57 feet; north 16 degrees 52 minutes 15 seconds west 84.68 feet; north 02 degrees 24 minutes 33 seconds west 204.18 feet; north 24 degrees 02 minutes 45 seconds west 167.17 feet; north 01 degree 19 minutes 15 seconds west 75.77 feet; north 02 degrees 47 minutes 15 seconds west 111.54 feet; north 04 degrees 30 minutes 30 seconds west 217.55 feet; north 06 degrees 05 minutes 00 seconds east 122.42 feet; north 12 degrees 21 minutes 00 seconds east 155.16 feet; north 20 degrees 49 minutes 15 seconds east 103.56 feet; north 08 degrees 07 minutes 00 seconds west 94.23 feet; north 29 degrees 19 minutes 45 seconds west 78.63 feet; north 48 degrees 20 minutes 45 seconds west 72.29 feet; north 55 degrees 13 minutes 15 seconds west 94.04 feet;



north 39 degrees 17 minutes 15 seconds west 99.46 feet; north 78 degrees 39 minutes 30 seconds west 144.49 feet; north 61 degrees 49 minutes 15 seconds west 57.99 feet; north 47 degrees 20 minutes 15 seconds west 87.33 feet; north 42 degrees 18 minutes 30 seconds west 238.61 feet; north 24 degrees 38 minutes 00 seconds west 105.00 feet; north 12 degrees 36 minutes 15 seconds west 132.26 feet; north 17 degrees 19 minutes 15 seconds east 64.83 feet; north 31 degrees 19 minutes 45 seconds east 65.07 feet; north 04 degrees 38 minutes 00 seconds west 67.48 feet; north 38 degrees 37 minutes 00 seconds west 198.40 feet; north 30 degrees 41 minutes 00 seconds west 101.52 feet; north 26 degrees 37 minutes 45 seconds west 99.98 feet; and north 40 degrees 20 minutes 15 seconds west 245.66 feet to an iron pin located on the west land lot line of Land Lot 314; thence running north 00 degrees 27 minutes east along the west land lot line of Land Lot 314 and 299 a distance of 3,412.58 feet to rocks found in the northwest corner of Land Lot 299; thence running north 01 degree 02 minutes east along the west land lot line of Land Lot 278 a distance of 2644.62 feet to an iron bar and point of being as per plat of property for Big Canoe Company by Baldwin & Cranston Associates, Inc. dated October 7, 1972.

Pickens County filed for record on the 7th day of July 1988 at 2:00 P.M. Recorded This 7th day of July 1988 by Mildred C. Mullinax C.S.C.
Book No. 139 - 437

Exhibit 2

State of Georgia



COUNTY OF PICKENS OFFICE OF THE CLERK OF SUPERIOR COURT

ELECTRONIC DOCUMENT CERTIFICATION

Certification Date: 08/06/26

Book Reference: JJ 233

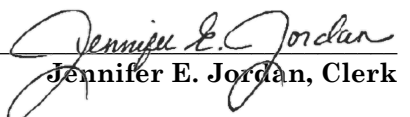
Authentication Code: V4417-Y1M11-9BD5

Number of Pages: 1

I, **Jennifer E. Jordan**, Clerk of Superior Court, or Deputy Clerk specified below, hereby certify that the attached page(s) is/are a true and correct copy of the document(s) enumerated herein, and that said document(s) are on file as a part of the official records of this office, of which I am the official custodian, as authorized by Georgia law. Witness my hand and official seal of this office on the date written.



Official Seal of Clerk


Jennifer E. Jordan, Clerk
Stephannie Henderson
Prepared by:

INSTRUCTIONS FOR AUTHENTICATING THIS CERTIFICATION

This electronically certified record can be authenticated as having been duly certified by the issuing officer by accessing the link below:

<https://ecert.gsccca.org/document/V4417-Y1M11-9BD5>

Authentication of a certified document is a multiple step process. Instructions for authenticating a certified document can be found at the link below:

<https://ecert.gsccca.org/authenticationinstructions>



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