

**DECLARATION OF RESTATED AND  
SUPPLEMENTAL PROTECTIVE COVENANTS**

**FOR**

**MONUMENT FALLS**

**Prepared by:  
Alexander S. Clay  
McRae & Bisbee, LLP  
Suite 800, One Georgia Center  
600 W. Peachtree Street NW  
Atlanta, GA 30308**

**TABLE OF CONTENTS**

**I. DEFINITIONS . . . . . 2**

**II. PROPERTY SUBJECT TO THIS RESTATED DECLARATION . . . . . 2**

    1. Property Hereby Subjected to this Restated Declaration . . . . . 2

**III. MFPOA MEMBERSHIP AND VOTING RIGHTS . . . . . 2**

    1. Membership . . . . . 2

    2. Voting 3

**IV. ASSESSMENTS . . . . . 3**

    1. Purpose of Assessments . . . . . 3

    2. Creation of Liens and Personal Obligation for Assessments . . . . . 3

    3. Determination of Annual Common Assessments . . . . . 4

    4. Special Assessments . . . . . 4

    5. Exemption for Specific Owners of Lots . . . . . 4

    6. Specific Assessments . . . . . 4

    7. Lien for Assessments . . . . . 5

    8. Effect of Nonpayment of Assessments:  
        Remedies of MFPOA . . . . . 5

**V. COMMITTEES . . . . . 6**

    1. Roads Committee . . . . . 6

    2. Compliance Committee . . . . . 6

    3. Nominating Committee . . . . . 7

**VI. MAINTENANCE OF PRIVATE STREET AND ENTRY FEATURES . . . . . 7**

    1. MFPOA’s Responsibility . . . . . 7

    2. Damage Caused by Owners . . . . . 7

    3. Owner’s Responsibility . . . . . 7

<b>VII.</b>	<b>USE RESTRICTIONS AND RULES</b>	<b>8</b>
1.	General	8
2.	Residential Use	8
3.	Signs	9
4.	Private Street	9
5.	Vehicles	10
6.	Entry Features	10
7.	Leasing	10
8.	Occupants Bound	11
9.	Animals and Pets	11
10.	Wildlife	11
11.	Nuisance	11
12.	Unsightly or Unkempt Conditions	12
13.	Tree Removal	12
14.	Sight Distance at Intersections	12
15.	Clotheslines, Garbage Cans, Woodpiles, Basketball Equipment, Etc.	12
16.	Subdivision of Lot	13
17.	Hunting and Firearms	13
18.	Mailboxes	13
19.	Assumption of Risk	13
20.	Abandoned Personal Property	13
21.	Open Fires	14
<b>VIII.</b>	<b>INSURANCE AND CASUALTY LOSS</b>	<b>14</b>
1.	Insurance on Private Street and Entry Features	14
2.	Individual Insurance	16
3.	Damage and Destruction - Insured by MFPOA	16
4.	Damage and Destruction - Insured by Owner	17
<b>IX.</b>	<b>CONDEMNATION</b>	<b>17</b>
<b>X.</b>	<b>ARCHITECTURAL AND CONSTRUCTION STANDARDS</b>	<b>17</b>
1.	Community Standards	17
2.	Permissible Building Areas	18
3.	Minimum Size of Residences	18
4.	Temporary and Secondary Structures	18
5.	Construction Rules and Regulations	19

<b>XI.</b>	<b>MORTGAGEE PROVISIONS</b>	<b>19</b>
1.	Notices of Action	19
2.	Approval of Action	20
3.	Right to Pay Taxes	20
4.	No Priority	20
5.	Amendments by Board	20
6.	Application of This Article	21
7.	Failure of Eligible Holder to Respond	21
<b>XII.</b>	<b>EASEMENTS</b>	<b>21</b>
1.	Easements for Use and Enjoyment	21
2.	Easements for Access, Utilities and Maintenance	22
3.	Easement for Entry	22
4.	Easement for Maintenance	22
<b>XIII.</b>	<b>GENERAL PROVISIONS</b>	<b>23</b>
1.	Enforcement	23
2.	WindSong Provisions	23
3.	Duration	25
4.	Amendment	25
5.	Security	26
6.	Dispute Resolution	26
7.	Partition	26
8.	Gender and Grammar	26
9.	Severability	27
10.	Captions	27
11.	Preparer	27
12.	Perpetuities	27
13.	Indemnification	27
14.	Emergency Services	27
15.	Utility Services	27
16.	Notice of Sale or Lease	28
17.	Agreements	28
18.	Implied Rights	28
19.	Notices	28
20.	Addresses of Owners	28

## TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Name</u>
“A”	Legal Description of Monument Falls Subdivision
“B”	Consent of Member Form and Consent of Lender Form
“C”	Definitions

**DECLARATION OF RESTATED AND SUPPLEMENTAL  
PROTECTIVE COVENANTS FOR  
  
MONUMENT FALLS**

**THIS DECLARATION OF RESTATED AND SUPPLEMENTAL PROTECTIVE COVENANTS FOR MONUMENT FALLS** (“Restated Declaration”) is made on the 31st day of January, 2004, by **Monument Falls Property Owners Association, Inc., a Georgia non-profit corporation** (“MFPOA”) and the **Undersigned Members of MFPOA** (“Undersigned Members”);

**WITNESSETH:**

**WHEREAS**, Monument Falls is a residential subdivision in Pickens County, Georgia, more particularly described on **Exhibit “A”** attached hereto and incorporated herein by this reference; and

**WHEREAS**, each and every owner of a Lot in Monument Falls or of a Lot in the adjacent WindSong development is a Member of MFPOA; and,

**WHEREAS**, the Developer of Monument Falls and Declarant under that certain Monument Falls Declaration of Covenants Conditions and Restrictions dated March 8, 1996, filed for record March 11, 1996, recorded at Deed Book 250, Page 102, Pickens County, Georgia Records, as subsequently amended and supplemented, has sold all of the Lots within Monument Falls and has assigned and transferred all of its rights, duties and obligations under the Original Declaration to MFPOA; and,

**WHEREAS**, Monument Falls already is subject to the Original Declaration, and the purpose of this Restated Declaration is to complement the Original Declaration, and to provide for additional covenants, rights and limitations which will assure the protection and preservation of the rights of the Members to a greater extent than would be possible under the existing applicable provisions of the Original Declaration.

**NOW, THEREFORE**, by the execution hereof, MFPOA hereby subjects all the common property of Monument Falls owned by MFPOA, consisting of the Private Street and Entry Features, to this Restated Declaration. In addition, each Undersigned Member, by virtue of that Undersigned Member’s executed Consent of Member, attached hereto and recorded herewith, or recorded subsequently to the recordation of this Restated Declaration (each and every Consent of Member incorporated herein by reference, whether recorded herewith or subsequent to) hereby consents to the entire Monument Falls subdivision being subject to this Restated Declaration, and hereby specifically subjects that Undersigned Member’s property, including the improvements constructed or to be constructed thereon, to the provisions of this Restated Declaration, and said property shall be held, sold, transferred, conveyed, used, occupied, leased and mortgaged or otherwise encumbered subject to the

covenants, conditions, restrictions, easements, assessments, and liens as set forth in this Restated Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Restated Declaration and shall be binding on all persons having any right, title, or interest in all or any portions of the real property subject to this Restated Declaration, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall be for the benefit of all owners of the property which is now or hereafter subject to this Restated Declaration. A form of the Consent of Member is attached hereto as **Exhibit “B”**. To the extent, if at all, that a Mortgage is outstanding as to the Lot of an Undersigned Member at the time a Consent of Member is executed, the form of the Consent of Lender which would be appropriate to subordinate the rights of the holder thereof to this Restated Declaration is also attached hereto as a part of **Exhibit “B”**.

## **Article I** **Definitions**

Certain words used in this Restated Declaration shall be defined as set forth in **Exhibit “C”**, attached hereto and by this reference made a part of this Restated Declaration.

## **Article II**

### **Property Subject To This Restated Declaration**

**Section 1. Property Hereby Subjected To This Restated Declaration.** The real property which is, by the recording of this Restated Declaration, subjected to the covenants and restrictions set forth in this Restated Declaration is the real property owned by MFPOA and known as the common property of Monument Falls, consisting of the Private Street and Entry Features, together with the property owned by each Undersigned Member who has executed a Consent of Member form with regard to this Restated Declaration.

## **Article III**

### **MFPOA Membership and Voting Rights**

**Section 1. Membership.** Every Person who is the record owner of a fee simple interest (as opposed to merely a Mortgagee) in and to any Lot in Monument Falls or in the adjacent WindSong development shall automatically be a Member of MFPOA, and the conveyance by whatever means of the fee simple title to any Lot shall automatically constitute a transfer by the Grantor thereof to the Grantee thereof of the Grantor’s interests as a Member of MFPOA with respect to the Lot so conveyed. Membership shall go along with and may not be separated from the ownership of fee simple title to a Lot. Membership shall not include Persons who hold a security interest only, and the giving of a security interest in a Lot shall not terminate or otherwise impair the Owner’s interests as a Member of MFPOA. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of

a Lot, votes and rights of use and enjoyment shall be as provided in this Restated Declaration and in the Restated By-Laws of MFPOA. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a Member or the Member's spouse or domestic partner.

**Section 2. Voting.** Subject to the limitations set forth in Section 1 of this Article III, Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide. The vote attributable to the ownership of any such Lot shall be suspended in the event more than one Owner of any such Lot attempts to cast the vote which is the entitlement of the Owners of such Lot. The Board of MFPOA shall also have the right to suspend the voting rights of a Lot Owner (1) for any period during which any Assessment against his or her Lot as herein provided for remains unpaid; and (2) for a reasonable period of time, in the event of a violation by any Owner of this Restated Declaration.

## **Article IV**

### **Assessments**

**Section 1. Purpose of Assessments.** The Assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of MFPOA.

**Section 2. Creation of Liens and Personal Obligations for Assessments.** Each Owner of any Lot, by acceptance of a deed to or other conveyance of the Lot, whether or not stated in the deed or conveyance, covenants and agrees to pay to MFPOA: (a) Common Assessments; (b) Special Assessments; and (c) Specific Assessments. All Assessments, together with late charges, interest at the rate of twelve percent (12.0%) per annum, costs, and reasonable attorney's fees actually incurred, shall be (a) a charge on and a continuing lien upon the Lot owned by the Owner against whom each Assessment is made; and (b) the personal obligation of the Person who is the Owner of the Lot at the time the Assessment becomes due. The grantee of each Owner shall be jointly and severally liable for all Assessments which are due and payable at the time of the transfer of title to the Lot; provided, however, that (a) the liability of a grantee for any then unpaid Assessments of an Owner shall not apply to any Mortgagee taking title through foreclosure proceedings or by deed in lieu of foreclosure, but (b) any Mortgagee who takes title through foreclosure proceedings or by deed in lieu of foreclosure shall be liable for all Assessments due after the date of foreclosure or deed in lieu of foreclosure. Common Assessments and Special Assessments shall be levied equally on the Owners of all Lots and shall be paid in such manner and on such dates as are fixed by the Board of MFPOA. Specific Assessments shall be levied on the Owners of specific Lots and shall be paid in such manner and on such dates as are fixed by the Board of MFPOA. Unless the Board of MFPOA provides otherwise, Common Assessments shall be paid on an annual basis thirty (30) days from receipt of an invoice from the Board, said invoices to be sent out to Lot Owners within a reasonable time following the Annual Meeting of the Members.



**Section 3. Determination of Annual Common Assessments.** It shall be the objective of the outgoing President of MFPOA, prior to the Annual Meeting of Members, to prepare a budget covering the estimated operating expenses of MFPOA during the coming fiscal year. The budget shall include a requirement for capital contributions establishing a reserve fund for capital improvements and replacements with regard to the Private Street and Entry Features. The Common Assessment to be levied against the Owner of each Lot for the coming year shall be set in each such budget at a level which is reasonably expected to produce total revenue to MFPOA equal to the total budgeted common expenses, including such reserves as the outgoing President of MFPOA, in his or her discretion, shall consider to be appropriate. Each such budget, including the amount of the Common Assessment for each Lot, shall be effective upon the approval thereof, or upon the approval of any amendment(s) thereto, by majority vote of the Members at an Annual Meeting of the Members. the Board, or an Officer designated by the Board, shall deliver or mail a copy of the approved budget and notice of the amount of the Common Assessment for each Lot to each Owner within a reasonable time subsequent to the approval thereof. Notwithstanding the above, in the event a proposed budget and Common Assessment for each Lot are disapproved at an Annual Meeting of the Members, then until a budget and Common Assessment for each Lot are approved and distributed, the budget and Common Assessment for each Lot in effect for the immediately preceding fiscal year shall continue for the current fiscal year.

**Section 4. Special Assessments.** In addition to the other Assessments authorized herein, the Board of MFPOA may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be paid as determined by the Board of MFPOA, and the Board of MFPOA may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed; provided, however, that any such Special Assessments must be approved by Members holding at least two-third (2/3) of the votes present in person or by proxy at a duly called meeting held for such purpose.

**Section 5. Exemption for Specific Owners of Lots.** Members (i) who are Owners of Lots which front on Monument Road, a county owned and maintained public right-of-way, (ii) who either directly or through their predecessors in title acquired their Lots by deeds which were subject to amendments to the Original Declaration which specifically provided for the exemptions of such Lots from any annual or special assessments for upkeep and maintenance of roads, and (iii) whose only usage of vehicular access to their Lots are from Monument Road, rather than from the Private Street, shall continue to be exempt (as was the case under the Original Declaration) from paying any and all Common Assessments whatsoever, or any Special Assessments that are levied for the sole purpose of repairing or maintaining the Private Street and Entry Features.

**Section 6. Specific Assessments.** The Board of MFPOA shall have the power to assess specific Lots pursuant to this Section as, in its discretion, it shall deem appropriate, for the failure of any Owner to comply with the requirements of this Restated Declaration or the Original Declaration or to properly maintain the Lot owned by such Owner. Failure of the Board of MFPOA to exercise its authority under

this Section shall not be grounds for any action against MFPOA or the Board of MFPOA and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of MFPOA has not previously exercised its authority under this Section. Fines levied by the Board of MFPOA against any Owner pursuant to any the provisions of this Restated Declaration, fees payable by an Owner to MFPOA pursuant to any of the provisions of this Restated Declaration or the Original Declaration, and all costs incurred by MFPOA for which an Owner is responsible pursuant to any of the provisions of this Restated Declaration or the Original Declaration shall be the basis for Specific Assessments. Further, in recognition of the difficulties which could be caused to the Monument Falls as the result of any failure of Owners to pay any Assessments owed pursuant to this Restated Declaration or the Original Declaration, in the event the Board of MFPOA receives notice of any such nonpayment, the Board of MFPOA shall have the right, but not the obligation, to pay such Assessment on behalf of such Owner and to levy a Specific Assessment against the Owner relative thereto.

**Section 7. Lien for Assessments.** All Assessments levied against any Lot, together with late charges, interest at the rate of twelve percent (12.0%) per annum, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of MFPOA. The Board of MFPOA shall have the right, but not the obligation, to evidence the existence of any such lien by filing a notice of lien in the Clerk of the Superior Court's office of the County in which Monument Falls is located. The lien shall be superior to all other liens and encumbrances on the Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a Mortgage duly recorded in the Clerk of the Superior Court's records of the County in which Monument Falls is located prior to the recordation of such lien. All Persons acquiring liens or encumbrances on any Lot after this Restated Declaration has been recorded shall be deemed to have consented that their liens or encumbrances shall be inferior to future liens for Assessments, whether or not such consent is specifically set forth in the instruments creating their liens or encumbrances.

**Section 8. Effect of Nonpayment of Assessments: Remedies of MFPOA.** Any Assessments or installments of Assessments which are not paid when due shall be delinquent. Any Assessment or installment delinquent for a period of more than ten (10) days shall incur a late charge in such amount as the Board of MFPOA may from time to time determine, which shall not exceed fifteen percent (15%) of the delinquent Assessment. The Board of MFPOA shall have the right to cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. If the Assessment is not paid within thirty (30) days, a lien shall attach and, in addition, the lien shall include the late charge, interest at the rate of twelve percent (12.0%) per annum and all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The existence of the lien may, but is not required to be, evidenced by the filing of a notice of lien in the Clerk of the Superior Court's office in the County in which Monument Falls is located. In the event that the Assessment remains unpaid after sixty (60) days, MFPOA may, as the Board of MFPOA shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Board of MFPOA or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the lien. The lien

provided for in this Article shall be in favor of MFPOA and shall be for the benefit of all other Owners. MFPOA, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise exempt himself or herself from liability for Assessments, whether by abandoning the Lot or in any other manner. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner, and no reduction of any Assessment shall be claimed or allowed by reason of (a) any alleged failure of the Board of MFPOA to take some action or perform some function required to be taken or performed by the Board of MFPOA under this Restated Declaration or the Restated By-Laws, (b) for inconvenience or discomfort arising from the making or not making of repairs or improvements which are the responsibility of MFPOA, or (c) from any action taken by MFPOA to comply with any law, ordinance, or with any order to directive of any municipal or other governmental authority. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent Assessments.

## **Article V**

### **Committees**

The Board shall have the right from time to time to appoint various committees comprised of Owners, which shall report to the Board and have only such authority as the Board shall specifically delegate to each such committee. Such committees as shall be appointed annually by the Board, including the designation of the Owner who shall chair each committee, shall include, without limitation, the following:

**Section 1.     Roads Committee.** The Roads Committee shall (i) assess the status of the Private Street and Entry Features of Monument Falls, (ii) report all findings as to the condition of the Private Street and Entry Features to the Board, and (iii) act as liaison with any Persons, companies or contractors hired by the Board to repair or maintain the Private Street and Entry Features. The Board shall have the sole authority to make decisions regarding the status of the Private Street and Entry Features and any possible required repair or maintenance needed based on the reports made by the Roads Committee, and shall have the authority to hire Persons, companies or contractors to perform said repair or maintenance.

**Section 2.     Compliance Committee.** The Compliance Committee shall monitor the compliance by the Owners with the Monument Falls-Wide Standard and this Restated Declaration. Any Owner who has an issue of non-compliance with another Owner shall submit the issue in writing to the Compliance Committee. The Compliance Committee shall investigate the issue and submit a written report of all findings as to the compliance or non-compliance of any Owner with the Monument Falls-Wide Standard and this Restated Declaration to the Board, along with recommendations for remedial action; provided, however, that in no event shall the Compliance Committee have the authority to deal with any issues concerning the construction of Structures and other improvements or other matters which are within the specific authority of the Board of MFPOA. The Board shall have the sole authority to make decisions regarding any issue of an Owner's compliance or non-compliance with the Monument Falls-Wide Standard, Community Standards and this Restated Declaration.

**Section 3. Nominating Committee.** The Nominating Committee shall be appointed annually no later than thirty (30) days prior to the Annual Meeting of the Members. The responsibility of the Nominating Committee is to develop a list of Members who agree to run for election to serve as Directors on the Board of MFPOA and to fill the positions of President, Treasurer, Secretary, and any other Officer positions that exist. The list of nominees shall be presented to the Members at the Annual Meeting by the Nominating Committee.

## Article VI

### **Maintenance of Private Street and Entry Features**

**Section 1. MFPOA's Responsibility.** The Private Street and Entry Features shall be monitored continually by the Roads Committee as set forth in Section 1 of Article V. MFPOA shall maintain and keep in good repair the Entry Features for Monument Falls which are located within Monument Falls, including obtaining and paying the expenses for any electricity that is now or may hereafter be provided to the Entry Features. MFPOA shall maintain and keep in good repair the Private Street located in Monument Falls, along with all shoulders, retaining or decorative walls, gutters, drains, culverts and bridges associated therewith.

**Section 2. Damage Caused by Owners.** Any other provisions of this Restated Declaration to the contrary notwithstanding, in the event the Board of MFPOA determines that the need for any maintenance, repair or replacement which is the responsibility of MFPOA is caused through (i) the willful or negligent act of an Owner, his or her family, guests, lessees, contractors, subcontractors, agents or invitees, or (ii) as the direct or indirect result of construction or maintenance activities conducted on any Lot, and in the event such maintenance, repair or replacement is not completely covered or paid for by insurance maintained by MFPOA, then MFPOA may perform such maintenance, repair or replacement at the expense of the responsible Owner, and in the event of the non-payment by any such responsible Owner of any such expenses within fifteen (15) days after notice from the Board of MFPOA, the Board of MFPOA shall have the right to levy a Specific Assessment against such responsible Owner for the full amount of any such expenses.

**Section 3. Owner's Responsibility.** The maintenance of the Lots and all Structures, driveways, parking areas, landscaping, and other improvements on each Lot shall be the sole responsibility of the Owner, who shall maintain the Lot in a manner consistent with Monument Falls-Wide Standard and this Restated Declaration. The Compliance Committee shall monitor the maintenance of improvements on each Lot, and shall investigate any deviation from the Monument Falls-Wide Standard and this Restated Declaration. If necessary, the Compliance Committee will report any incidents to the Board of MFPOA. In the event the Board of MFPOA, by a majority vote, determines that a Lot is not being maintained in a manner consistent with Monument Falls-Wide Standard and this Restated Declaration, except in what the Board reasonably determines to be an emergency situation or a chronic repetition of a prior maintenance problem, the Board of MFPOA shall give the Owner written notice of MFPOA's intent to provide the

necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall describe the maintenance, repairs, or replacements deemed necessary. The Owner shall have thirty (30) days after such notice to complete the maintenance, repair, or replacement. In the event the required maintenance, repair, or replacement cannot reasonably be completed within said thirty (30) day period, the Owner shall begin the work within said thirty (30) day period and shall complete it within a reasonable time after the expiration of said thirty (30) day period. If any Owner does not comply with the foregoing requirements in a timely manner, MFPOA may provide the maintenance, repair, or replacement at Owner's sole cost and expense, and in the event of the non-payment by any such Owner of any such expenses within fifteen (15) days after notice from the Board of MFPOA, MFPOA shall have the right to levy a Specific Assessment against such Owner for the full amount of any such expenses.

## **Article VII**

### **Use Restrictions and Rules**

**Section 1.     General.** A primary purpose of this Restated Declaration is to assure the Owners and Occupants of Lots that they will have the opportunity to fully enjoy the benefits of ownership and occupancy of their respective Lots, the Private Street and the Entry Features, in a manner which will protect their privacy, property and personal safety and will enhance their enjoyment of the natural beauty of Monument Falls, without unduly infringing upon the rights of the Owners or Occupants of other Lots. Monument Falls will be comprised of Owners and Occupants who have selected their respective Lots for homes, either primary or secondary, where they can experience a quality of life that is often not possible in a more urban setting. The large sizes of the Lots inherently provide the assurance of substantial privacy, but one of the purposes of this Restated Declaration is to provide even further assurances that the Owners and Occupants of Lots will be able to optimize the time they spend in Monument Falls and to protect the quite substantial investments they have made in their Lots and the Structures and other improvements built on their Lots. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants of Lots (including Undersigned Members or any successor Undersigned Members).

**Section 2.     Residential Use.** Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of Monument Falls, including business uses ancillary to a primary residential use; provided, however, that the Owner or Occupant residing in the residence on a Lot may conduct such ancillary business activities within such residence or on any portion of the Lot so long as: (a) the existence of or operation of the business activity is not inherently offensive to and within sight of a residence situated on any other Lot; (b) the business activity does not involve significant numbers of persons coming onto Monument Falls who do not reside in Monument Falls or door-to-door solicitation of residents of Monument Falls; (c) the business activity conforms to all applicable zoning requirements for Monument Falls; (d) the business activity does not increase any insurance premium paid by MFPOA or otherwise negatively affect the ability of MFPOA to obtain insurance coverage; and

(e) the business activity does not reasonably threaten the security or safety of other residents of Monument Falls, as may be determined in the sole discretion of the Board of MFPOA. The terms “business” and “trade,” as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on a regular ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity.

**Section 3. Signs.** No signs of any kind shall be erected by an Owner or Occupant of a Lot within Monument Falls without the prior written consent of the Board of MFPOA except as follows: (a) one (1) “For Sale” or “For Rent” sign, (b) one (1) professional lettered security sign consistent with the Monument Falls-Wide Standard and (c) one (1) identification sign providing the name of the Owner and/or the address or name of the residence. Notwithstanding the foregoing, the Board of MFPOA shall have the right to erect reasonable and appropriate signs. No advertising, directional or vendor signs shall be permitted within Monument Falls except for temporary signage identifying the contractor and/or architect during the construction of a Structure on a Lot and such other signage as may be approved by the Board of MFPOA.

**Section 4. Private Street.** The Private Street is exactly what the name denotes - a perpetual easement for a paved private street that provides access to Monument Falls. It is not intended that the Private Street will ever be dedicated to the public, although it will be maintained in accordance with the minimum specifications applicable to the streets of Pickens County, whenever reasonably possible, with appropriate design, compaction, paving, shoulders and drainage structures to assure the use of the Private Street by the Owners and Occupants of Lots and their invited guests as quality and attractive access to the Lots. The following regulations shall be applicable to all Vehicles used on the Private Street:

**a Speed Limits and Traffic Controls.** Since speed limits and other traffic controls are not applicable to private streets in Pickens County, the Board of MFPOA will post such traffic signs along the Private Street from time to time as the Board of MFPOA in its discretion shall consider to be appropriate, and the Owners and Occupants of the Lots shall be required to comply at all times with these limitations and to cause their families and guests and contractors to do likewise.

**b No Street Lighting.** Street lighting will not be provided along the Private Street, unless incidentally at the Entry Features, and consequently all Vehicles must use proper headlights at all times when the natural light conditions are marginal or when the weather is inclement and must strictly observe all posted speed limits, particularly where the Private Street is intersected by driveways leading to Structures built on the Lots.

**c**     **No Horns or Sirens.** The use of horns or sirens on Vehicles are unnecessary and inappropriate at all times within Monument Falls, except for emergency theft alarms. Similarly, the volume levels of sound reproduction equipment in all Vehicles shall be limited to the extent necessary to preserve the tranquility of Monument Falls.

**d**     **Mufflers.**     Appropriate mufflers and other sound control devices shall be fully functional at all times on all Vehicles traversing the Private Street.

**Section 5.     Vehicles.** If possible, all Vehicles shall be parked only within garages, driveways or other parking areas located on a Lot which shall be shielded from view from (i) the Private Street serving such Lot, and (ii) all primary Structures located on all other Lots. No Vehicle may be parked or left upon any portion of the Private Street within Monument Falls, except that if a Vehicle is in a condition so that it cannot be operated on the Private Street, it may be parked on a shoulder of the Private Street within Monument Falls for a period of no more than ten (10) days. After the aforesaid ten (10) day period, the inoperable Vehicle shall be considered abandoned and a nuisance and may be removed from Monument Falls by the MFPOA upon three (3) days notice to the Owner of the vehicle if the Roads Committee can determine that the vehicle is owned by an Owner, with a Specific Assessment to the Owner responsible for such nuisance to the full extent of the direct and indirect costs incurred by MFPOA relative thereto. Without the prior written consent of the Board of MFPOA, no eighteen wheel trucks or the cabs of these trucks or busses shall be temporarily or permanently parked, kept or stored in Monument Falls at any time, and any such Vehicles parked, kept or stored in violation of this provision shall be considered a nuisance and may be removed from Monument Falls by the Board of MFPOA, with a Specific Assessment to the Owner responsible for such nuisance to the full extent of the direct and indirect costs incurred by MFPOA relative thereto. However, moving vans, service or delivery Vehicles may be parked in Monument Falls for such period of time as is reasonably necessary to provide the services for which these Vehicles have been engaged to provide. In no event shall any Vehicles having metal treads or wheels be operated at any time on the Private Street, and in the event of any violation of the aforesaid prohibition, the Board of MFPOA shall have the right to levy a Specific Assessment upon the responsible Owner to the full extent of the direct and indirect costs incurred by MFPOA relative thereto.

**Section 6.     Entry Features.**     The Entry Features shall be designed and constructed in a manner to project the quality image of Monument Falls and to provide limitations upon vehicular access to Monument Falls. In no event shall any Owner or Occupant, or any guest or contractor of any Owner or Occupant, deface or permit to be defaced any components of the Entry Features or take any other action which could frustrate the purposes of the Entry Features.

**Section 7.     Leasing.** Lots and Structures may be leased for residential purposes only. All leases shall have a minimum term of one (1) year and a copy of each lease shall be given to the Board of MFPOA by the Owner of the Lot within ten (10) days after entering into the lease. All leases shall require that the tenant acknowledge receipt of a copy of the Restated Declaration, Restated By-Laws, use restrictions, and rules and regulations of MFPOA and shall also obligate the tenant to comply with these documents. The

Owner shall have the right to transfer and assign to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Private Street, but other than as it relates to Owners' guests and invitees, no Owner shall have the right to grant to any Person other than the tenant under such a lease any right to use the Private Street.

**Section 8. Occupants Bound.** All provisions of the Restated Declaration, Restated By-Laws, and of any rules and regulations, or use restrictions which govern the conduct of Owners and which provide for actions against Owners shall also apply to all Occupants of Lots and any family members, guests, contractors, subcontractors, agents or invitees of such Occupants. The Owner shall be responsible for insuring that the Occupants, and the guests, invitees and licensees of the Owner or of the Occupant, strictly comply with all provisions of the Restated Declaration, Restated By-Laws, and any rules and regulations adopted by the Board of MFPOA. Fines may be levied against Owners or Occupants for any failure to comply fully with the foregoing requirements. If a fine is levied against an Occupant of a Lot and is not paid timely, the fine may then be levied as a Specific Assessment against the Owner of the Lot.

**Section 9. Animals and Pets.** No animals of any kind may be raised, bred, kept, or permitted within Monument Falls, except for horses kept on a Lot as to which the Board of MFPOA has granted a specific written exemption by with regard to the aforesaid prohibition, and except for dogs, cats, or other usual and common household pets, which shall be permitted in reasonable numbers, as determined by the Board of MFPOA. An Owner who has a complaint about any pet or animal within Monument Falls shall submit a written complaint to the Compliance Committee. The Compliance Committee shall be responsible for attempting to resolve the dispute. If the Compliance Committee receives three (3) different written complaints regarding a particular pet or animal, the Compliance Committee shall submit a written report regarding that pet or animal to the Board of MFPOA, which shall have the authority to remove that pet or animal from Monument Falls. In addition, the Board of MFPOA, by rule or regulation, shall have the power to limit the number and types of pets or animals which may be kept on a Lot. All Owners and Occupants keeping pets or animals within Monument Falls shall comply with all applicable governmental ordinances and regulations. Without prejudice to the Board's right to remove any such household pets or animals after receiving a written report from the Compliance Committee, the Board of MFPOA may prohibit or remove any pet or animal that has caused injury to or threatens the health of an Owner. Animal control authorities shall be permitted to enter Monument Falls to patrol and remove pets and animals. Pets and animals shall be registered, licenced and inoculated as required by law.

**Section 10. Wildlife.** Another benefit to the Owners, Occupants and their families and guests is the abundant wildlife that is indigenous to Monument Falls. Every effort must be made at all times by MFPOA, the Owners and Occupants and their families and guests not to interfere with the normal activities of Monument Falls's indigenous wildlife and to protect and preserve their natural habitat within Monument Falls.



**Section 11. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No property within Monument Falls shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing, or material be kept or produced that will discharge foul or obnoxious odors which will or might disturb the surrounding property. No noxious or offensive activity shall be carried on within Monument Falls, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within Monument Falls. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Monument Falls. An Owner that has a complaint about any such condition on a Lot within Monument Falls shall submit a written complaint to the Compliance Committee. The Compliance Committee shall be responsible for attempting to resolve the dispute. If the Compliance Committee receives three (3) different written complaints regarding a particular condition on any Lot, the Compliance Committee shall submit a written report regarding that condition to the Board of MFPOA.

**Section 12. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities which cause disorderly, unsightly, or unkempt conditions, including particularly the assembly or disassembly of motor Vehicles and other large mechanical devices, shall not be pursued or undertaken in any part of Monument Falls except within the immediate vicinity of garages or other Structures located on Lots. An Owner that has a complaint about any such condition on a Lot within Monument Falls shall submit a written complaint to the Compliance Committee. The Compliance Committee shall be responsible for attempting to resolve the dispute. If the Compliance Committee receives three (3) different written complaints regarding a particular condition on any Lot, the Compliance Committee shall submit a written report regarding that condition to the Board of MFPOA.

**Section 13. Tree Removal.** No trees having a trunk diameter measured three (3) feet above the ground of eight (8) inches or more and a height of more than thirty (30) feet above the ground shall be removed without the express consent of the Board of MFPOA, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees or for safety reasons, (c) trees within twenty (20) feet of any Structure, or within ten (10) feet of any driveways or walkways constructed or to be constructed on a Lot, or (d) trees within the Permissible Building Area on any Lot which reasonably must be removed or topped in order to permit the Owner of the Structure constructed on that Lot to enjoy the scenic views which otherwise would not be visible from the decks, patios, porches, doors or windows of such Structures. All trees cut on any Lot shall be promptly removed by the Owner or Occupant of the Lot or neatly stacked as firewood.

**Section 14. Sight Distance at Intersections.** All driveways shall be located and all portions of Lots at the intersections of the Private Street and driveways shall be landscaped so as to permit safe sight in both directions. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem along the Private Street.

**Section 15. Clotheslines, Garbage Cans, Woodpiles, etc.** All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, the Private Street if possible, and the Entry Features, and in no event shall be maintained as to constitute a nuisance of any kind. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

**Section 16. Subdivision of Lot.** Any subdivision, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations or Pickens County, or other applicable laws or ordinances, including, without limitation, the Mountains Protection Act of the State of Georgia.

**Section 17. Hunting and Firearms.** Hunting and the use or discharge of firearms or fireworks on the Private Street or Entry Features, on any Lot or within any residence on any Lot in Monument Falls are prohibited at all times and for all purposes, except as hereinafter provided in this Section 17 to the contrary. The term “firearms” includes “B-B” guns, pellet guns, archery equipment and all other firearms of all types, regardless of size. The foregoing notwithstanding: (i) Owners and Occupants shall be permitted to keep and maintain firearms, at their discretion, within Structures and upon Lots as long as such firearms are used only for the defensive protection of life and property in accordance with all applicable laws; and (ii) “B-B” guns, pellet guns and archery equipment shall not be prohibited so long as (a) such equipment shall not be used for hunting purposes, and (b) such equipment shall be used in a manner that in every instance the projectile shall come to rest within the same Lot within which it is discharged.

**Section 18. Mailboxes.** No mailboxes shall be erected along the Private Street within Monument Falls. Mailboxes shall be located off-site or at the central mailbox facility within Monument Falls.

**Section 19. Assumption of Risk.** The Private Street and Entry Features shall be used at the risk of the user, and MFPOA shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to the use thereof.

**Section 20. Abandoned Personal Property.** Personal property, except for personal property owned by MFPOA, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Private Street or the Entry Features. If an Owner has a complaint regarding personal property, that Owner shall notify the Roads Committee, which shall be responsible for investigating and attempting to find a resolution to the problem. If the Roads Committee determines that the only potential resolution is removal of the personal property by the MFPOA, the Roads Committee shall so notify the Board of MFPOA in writing. If the Board of MFPOA determines that personal property is being kept, stored, or allowed to remain on the Private Street or the Entry Features in violation of this Section, then the Board of MFPOA may remove and either discard or store the personal property in a location which the Board of MFPOA may determine. If personal property is removed in accordance with this Section, neither MFPOA nor any Board of MFPOA or agent of MFPOA shall be liable to any Person for any claim of damage resulting from the removal activity or for the loss of such

personal property. Notwithstanding anything to the contrary herein, the Board of MFPOA may elect to impose fines or use other available sanctions, rather than to exercise its authority to remove or discard abandoned or improperly stored personal property as set forth herein.

**Section 21. Open Fires.** In recognition of the reality that open fires present a serious hazard of kindling a forest fire which could be hazardous to personal safety and property, no Owner or Occupant of any Lot shall permit to be set or maintained an open fire on any Lot or on the Private Street or the Entry Features outside of a fire-safe and secure enclosure unless that Owner has received a permit, in each such instance, from the applicable governmental authorities and obtains the prior written approval, in each such instance, of a fire marshall appointed by the Board of MFPOA. If the Board of MFPOA, in its sole discretion, determines that a fire has been or is being set on any Lot or on the Private Street or the Entry Features in violation of this Section, then the Board of MFPOA or his representative may intervene to order that such fire be extinguished and removed immediately. In the event of any such intervention, neither MFPOA nor any Board of MFPOA or agent of MFPOA shall be labile to any Person for any claim of damage resulting from this removal activity. In the event of any failure of the Board of MFPOA to order that such fire be extinguished and removed, neither MFPOA nor any Board of MFPOA or agent of MFPOA shall be labile to any Person for any claim of damage resulting from any such fire. Alternatively, the Board of MFPOA may elect to impose fines or use other available sanctions, rather than to exercise its authority to intervene in an effort to obtain the extinguishment and removal of a fire as set forth herein. The foregoing notwithstanding, trees or any portions thereof or leaves or other debris accumulated on any Lot may be burned, using proper safekeeping measures to preclude the spreading of any such fire, if such burning activity is specifically permitted by the proper governmental authorities.

## **Article VIII**

### **Insurance and Casualty Losses**

**Section 1. Insurance on Private Street and Entry Features.** MFPOA's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Private Street and the Entry Features and other property, if any, which MFPOA is obligated to maintain. This insurance (to the extent reasonably available) shall provide, at a minimum, fire and extended coverage (to the extent available at a reasonable cost), including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of MFPOA shall obtain a public liability policy applicable to the Private Street and the Entry Features covering MFPOA and its Members for all damage or injury caused by the negligence of MFPOA or any of its Members or agents, and if, reasonably available, Boards' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Premiums for all insurance shall be a common expense of MFPOA. The

casualty insurance policies may contain a reasonable deductible, in an amount to be determined in the discretion of the Board of MFPOA. All insurance coverage obtained by the Board of MFPOA shall be written in the name of MFPOA, as trustees for the respective benefitted parties, except as otherwise provided above and shall be governed by the provisions set forth below:

**a**     **Companies.**     All policies shall be written with a Company authorized to do business in Georgia.

**b**     **Adjustment of Losses.**     Exclusive authority to adjust losses under policies obtained by MFPOA shall be vested in MFPOA's Board.

**c**     **No Contribution.**     In no event shall the insurance coverage obtained and maintained by MFPOA's Board hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by MFPOA shall be primary.

**d**     **Endorsements.**     All casualty insurance policies (to the extent reasonably available) shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually by the Board of MFPOA. In conducting such reviews the Board of MFPOA may engage an expert whom in its sole discretion it deems fit.

**e**     **Additional Provisions.**     MFPOA's Board shall make every reasonable effort to secure insurance policies that will provide for the following:

**i**     A waiver of subrogation by the insurer as to any claims against MFPOA, its Board, the Owners and their respective tenants, servants, agents, families and guests;

**ii**     That no policy may be canceled, invalidated, or suspended on account of any unique risk elements involving one or more individual Owners;

**iii**     That no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any Member or employee of MFPOA or its duly authorized Board without prior demand in writing delivered to MFPOA to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by MFPOA, its Board or any Owner;

**iv**     That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

**v**     That no policy may be canceled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to MFPOA.

In addition to the other insurance required by this Section, the Board of MFPOA shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on the Board of MFPOA, employees and other persons handling or responsible for MFPOA's funds, if reasonably available. The amount of fidelity coverage shall be determined in the Board's best business judgment, but if reasonably available, shall not be less than the quarterly amounts payable of all Common Assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of MFPOA at any time during the term of the bond.

**Section 2. Individual Insurance.** Each Owner shall obtain and maintain "builder's risk" insurance during and throughout the time any Structures are being constructed on the Lot owned by such Owner, and immediately following the completion of such Structures, each Owner shall obtain and maintain "all-risk" casualty insurance on all Structures constructed on the Lot owned by such Owner, to the extent of the full replacement cost thereof. The policies may contain a reasonable deductible, but the deductible amount shall not be subtracted from the face amount of the policies in determining whether the insurance at least equals the full replacement cost. Each Owner shall also obtain and maintain at all times liability insurance covering all reasonably foreseeable damage or injury occurring on the Lot owned by such Owner. The Owners shall promptly pay all premiums due and shall otherwise take such actions as shall be necessary to cause the policies required hereunder to continue be in effect at all times. Each Owner shall provide a certificate of such required insurance to the Board of MFPOA, upon request.

**Section 3. Damage and Destruction - - Insured by MFPOA.**

**a In General.** Promptly after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of MFPOA, the Board of MFPOA or its duly authorized agent shall proceed with the filing and adjustment of all claims covered under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

**b Repair and Reconstruction.** The Board of MFPOA must proceed to repair or reconstruct any damage or destruction of the improvements on the Private Street on behalf of MFPOA unless within sixty (60) days after the casualty it obtains the agreement not to repair or reconstruct by at least sixty-five percent (65%) of the total MFPOA vote. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to MFPOA within such period, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is not sufficient to cover the cost of repair or reconstruction, the Board of MFPOA shall, without the necessity of a vote of MFPOA's Members, levy a Special Assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional Special Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or

reconstructed, such excess shall be retained by and for the benefit of MFPOA in an MFPOA account. In the event that it shall be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then the property shall be restored to its natural state and maintained as an undeveloped portion of Monument Falls by MFPOA in a neat and attractive condition.

**Section 4. Damage and Destruction - Insured by Owners.** The damage or destruction by fire or other casualty to all or any portion of any Structure or other improvement on a Lot shall be repaired by the Owner within ninety (90) days after the damage or destruction. However, where repairs cannot be completed within ninety (90) days, they shall begin within the required period and shall be diligently and continuously pursued until their completion. Alternatively, the Owner may decide to demolish and remove all damaged Structures or other improvements on the Lot, in which event such demolition and removal shall be accomplished within ninety (90) days after such damage or destruction and the Lot shall be restored to its natural state and maintained as an undeveloped Lot by the Owner in a neat and attractive condition.

## **Article IX**

### **Condemnation**

In the event of a taking by eminent domain of any portion of the Private Street or the Entry Features on which improvements have been constructed, then, unless within sixty (60) days after the taking, Owners holding at least sixty-five (65%) percent of the total MFPOA vote otherwise agree, MFPOA shall restore or replace the improvements taken on the remaining land included in the Private Street to the extent lands are available. The provisions of Article VIII, Section 3, above, applicable to Private Street improvements damage, shall govern replacement or restoration and the action to be taken in the event that the improvements are not restored or replaced.

## **Article X**

### **Construction of Structures**

**Section 1. Community Standards.** The Monument Falls community is comprised of Owners who have migrated here for love of the mountains and similar pastoral delights. As such, those who have built their homes within Monument Falls prior to the effective date of this Restated Declaration have effectively already established a norm of community standards governing that which they have built. This has occurred without architectural controls of the type presently practiced by some other communities, but nevertheless has resulted in a community that is architecturally attractive in most of its aspects. In order to continue this trend, certain Community Standards, which are consistent with most of the existing Structures and other improvements within Monument Falls, are hereinafter established for the future construction, erection or placement of Structures and other improvements within Monument Falls. Any proposed variations from these Community Standards shall be presented to the Board of MFPOA as a request for a variance permit. Although it is not the intent of the Board to dictate the type of Structure or other improvements which an Owner might build, before granting or denying any request for a variance permit, the Board is authorized

to strongly express to the Owner requesting such a variance permit the community's desire that its present pastoral ambiance is not to be disturbed. Although the Board of MFPOA may revise these Community Standards from time to time, with any such revisions to be effective immediately upon the adoption thereof by the Board, it is anticipated that the present Community Standards are the minimum standards which will at all times in the future be acceptable to MFPOA and the Monument Falls community, and that any further revisions will be in the context of making these Community Standards even more stringent. The initial Community Standards for all Structures and other improvements to be built, erected or placed within Monument Falls subsequent to the effective date of this Restated Declaration are as follows:

**a      Compatibility and Materials.**      All Structures and other improvements are to be built, erected or placed in a manner which is compatible with the contours of the surrounding mountainside wherever possible, are to be made of materials generally used for quality home construction, and are to be architecturally compatible with those other Structures and other improvements which presently exist within Monument Falls.

**b      Colors of Materials.**      The final colors of the exterior walls and the roof of all Structures shall be compatible with the colors of the woods and/or rocks naturally existing within Monument Falls.

**c      Driveways.**      The contours of driveways shall follow the natural contours of the land wherever possible.

**d      Landscaping.**      Although landscaping in the near vicinity of a Structure shall be left to the tastes of the Owner, the landscaping of the undeveloped areas of the Lots shall be left in a near-natural state wherever possible.

**Section 2.      Permissible Building Areas.**      Except when specifically approved by the Board, in its discretion, the Permissible Building Areas which are applicable to each of the Lots shall be those portions of the Lots which are no closer than sixty feet (60') to the center line of the right-of-way of the Private Street, no closer than twenty-five feet (25') to a side Lot line and no closer than twenty-five feet (25') to the rear Lot line. All Structures and other improvements constructed, erected or placed on Lots, except for (i) driveways connecting from the Private Street to a Permissible Building Area, (ii) Lot entry features (including retaining walls and terraces) located along such driveways and (iii) fences, shall be located entirely within the Permissible Building Areas. Those portions of the Lots which are outside the Permissible Building Areas are and shall be kept in their natural pristine condition, without grading, construction or other improvements except as specifically permitted by written authorization from the Board.

**Section 3.      Minimum Size of Residences.**      The minimum square footage of the primary Structure constructed on each Lot shall be no less than one thousand five hundred (1,500) square feet of fully-developed, conditioned living area.

**Section 4. Temporary and Secondary Structures.** In no event shall any manufactured home, mobile home, trailer, or any other form of similar secondary Structure be constructed, erected or placed upon a Lot unless it is (i) in full compliance with all of the requirements of Sections 1 and 2 of this Article 10, and (ii) constructed either during the time of the construction of the primary Structure or subsequent to the completion of the primary Structure; provided, however, that during the time of the construction of a primary Structure which is in full compliance with all of the requirements of Sections 1, 2 and 3 of this Article 10, a secondary Structure which is not in compliance with all of the requirements of Sections 1 and 2 of this Article 10 shall be permitted on a Lot so long as it is removed immediately following the completion of the primary Structure.

**Section 5. Construction Rules and Regulations.** In connection with the construction, reconstruction, repair, renovation, erection or placement of any Structures or other improvements on the Lots, the Board of MFPOA shall have the right to establish such construction rules and regulations as it, in its discretion shall determine to be appropriate, without consent of the Owners, to supplement or clarify the provisions of this Restated Declaration and/or to add, adopt, modify, or delete construction rules, regulations and procedures which shall generally be applicable to construction activities within Monument Falls, and any such construction rules and regulations and supplements or clarifications with respect thereto shall be effective immediately upon written notice to all Owners of Lots given pursuant to the requirements of this Restated Declaration. Any such construction rules and regulations and supplements or clarifications with respect thereto shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and Occupants of Lots and all Persons until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Members. Any such construction rules and regulations may, at the discretion of the Board of MFPOA, include the requirement of: (a) a bond for the benefit of MFPOA, in an amount reasonably required by the Board and issued by a commercial surety company approved by the Board with regard to any damage or destruction of the Entry Features or any of the improvements within the Private Street caused by an Owner or Occupant or his or her family, guests, contractors, subcontractors, agents or invitees in connection with any proposed construction activities on a Lot; and/or (b) payment to MFPOA by the Owner or Occupant of a Lot on which construction work is going to be performed of a reasonable fee to reimburse MFPOA for the wear and tear to the Private Street caused by normal and necessary construction traffic to and from such Lot.



## Article XI

### Mortgagee Provisions

The following provisions are for the benefit of Mortgagees with regard to Lots in Monument Falls. The provisions of this Article apply to both this Restated Declaration and to the Restated By-Laws, notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.** A Mortgagee who provides a written request to MFPOA (such request to state the name and address of such Mortgagee and the Lot number of the Lot described in the Mortgage of such Mortgagee) will thereby become an “Eligible Holder” and as such will be entitled to timely written notice of:

**a Notices of Losses.** any condemnation loss or any casualty loss which affects a material portion of Monument Falls or which affects any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Holder;

**b Notice of Foreclosure.** the institution of foreclosure proceedings with regard to Assessments levied pursuant to this Restated Declaration against an Owner of a Lot subject to the Mortgage of such Eligible Holder; or

**c Notice of Actions Affecting Eligible Holders.** any proposed action which would require the consent of a specified percentage of Eligible Holders.

**Section 2. Approval of Action.** Unless two-thirds (2/3) of the Eligible Holders and Owners give their consent, MFPOA shall not:

**a Abandonment of Private Street or Entry Features.** By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Private Street or Entry Features which MFPOA owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Private Street and Entry Features shall not be deemed a transfer within the meaning of this subsection) other than personal property of MFPOA;

**b Changes of Assessments.** Change the method of determining (but not the amounts from time to time of) the obligations, Assessments, dues, or other charges which may be levied against an Owner;

**c Changes to Construction Standards.** By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the construction standards or the exterior appearance and maintenance of Lots and of the Private Street or the Entry Features; or

**d**     **Fail to Maintain Insurance.** Fail to maintain insurance, as required by this Restated Declaration, to the extent such insurance is reasonably available.

**Section 3.**     **Right to Pay Taxes.** Eligible Holders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Private Street or the Entry Features, and Eligible Holders making such payments shall be entitled to immediate reimbursement from MFPOA.

**Section 4.**     **No Priority.** No provision of this Restated Declaration or the Restated By-Laws gives or shall be construed as giving any Owner or other Party priority over any rights of the Eligible Holder of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Private Street or Entry Features.

**Section 5.**     **Amendments by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the inclusion of any of the provisions of this Article or make any such requirements less stringent, the Board of MFPOA, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 6.**     **Application of This Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Restated Declaration or the Restated By-Laws, or under Georgia law, for any of the acts set out in this Article.

**Section 7.**     **Failure of Eligible Holder to Respond.** Any Eligible Holder who receives a written request from the Board of MFPOA to respond to or consent to any action shall be deemed to have approved such action if MFPOA does not receive a written response from the Eligible Holder within thirty (30) days of the date of MFPOA's request.

## **Article XII**

### **Easements**

**Section 1.**     **Easements for Use and Enjoyment.**

**a**     **Perpetual Easements.** Every Owner of a Lot shall have a perpetual easement of entry and exit over the Private Street, which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

**i**     The right of MFPOA to limit the number of families and guests of Lot Owners and Occupants who may use the Private Street and to provide for the exclusive use and enjoyment of specific portions of the Private Street at certain designated times by an Owner, his or her family, tenants, guests, and invitees or by a separate group or entity;

ii The right of MFPOA to establish and enforce speed limits, traffic controls and rules and regulations for the use of the Private Street, as restated or amended from time to time;

iii The right of MFPOA to borrow money for the purpose of improving the Private Street and the Entry Features, or for constructing, repairing, or improving any facilities located or to be located therein and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Private Street and Entry Features; provided, however, that the Mortgage given by MFPOA shall be subject and subordinate to this Restated Declaration and all rights, interests, options, easements and privileges reserved or established herein for the benefit of MFPOA and any Owner. Any provision in this Restated Declaration or in any Mortgage given by MFPOA to the contrary notwithstanding, the exercise of any rights in the Mortgage by the Mortgagee in the event of a default shall not cancel or terminate any rights, easements or privileges reserved or established in this Restated Declaration for the benefit of MFPOA or any Owner, or for the benefit of the Mortgagee under any Mortgage, irrespective of when executed, given by MFPOA or any Owner encumbering any Lot or other property located within Monument Falls. No Mortgage conveying all or a portion of the Private Street and Entry Features executed subsequent to the date of this Restated Declaration shall be effective unless an instrument agreeing to the Mortgage has been approved by Owners holding at least two-thirds (2/3) of the total vote of MFPOA; and

iv The right of MFPOA to dedicate or transfer all or any portion of the Private Street or Entry Features to any governmental, charitable or environmentally motivated entity subject to any conditions agreed on by the Board of MFPOA; provided, however, that no dedication or transfer of the Private Street and Entry Features shall be effective unless an instrument agreeing to the dedication or transfer has been approved by Owners holding at least two-thirds (2/3) of the total vote of MFPOA.

**b** **Delegation of Rights.** Any Owner may share his right of use and enjoyment in and to the Private Street and the Entry Features only with the members of his or her family and certain invitees, to the extent hereinabove specifically permitted. An Owner shall be deemed to have made a delegation of all these rights to the Occupants of the Owner's Lot, if such Lot is leased in compliance with the requirements of this Restated Declaration.

**Section 2. Easements for Access, Utilities and Maintenance.** MFPOA has blanket perpetual easements upon, across, above and under all property within Monument Falls for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities now or hereafter serving Monument Falls, its Lots and any portion of the Private Street or Entry Features, including, but not limited to, gas, water, sanitary sewer, telephone, electricity and cable television, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, a master cable television system, or any master security system which may be installed to serve Monument Falls. It shall be expressly permissible for the MFPOA, or the designee of MFPOA, to do or to authorize the installation, repairing, replacing, and maintaining of the wire, conduits, cables and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or

easement by separate recordable document, the Board of MFPOA, as applicable, shall have the right to grant such easement. There also are dedications for the benefit of the Owners and Occupants of the Lots of certain perpetual utility easements for electricity service and telephone service to the extent specifically shown on the Subdivision Plats.

**Section 3. Easement for Entry.** The Board of MFPOA shall have the right, but not the obligation, to enter upon any Lot or other property within Monument Falls for emergency, security, and safety reasons. This right may also be exercised by the agents of MFPOA, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in what is reasonably deemed to be an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and to the extent permitted by applicable laws the entering party shall be responsible for any damage caused. The Board of MFPOA shall have the right, but not the obligation, to enter any Lot to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard if an Owner or Occupant does not cure the condition within a reasonable time after any request by the Board of MFPOA relative thereto.

**Section 4. Easement for Maintenance.** The Undersigned Members hereby grant to MFPOA a perpetual easement for the benefit of MFPOA across such portions of Monument Falls as are determined in the sole discretion of MFPOA to be necessary to allow for the maintenance required under Article VI, including, without limitation, an easement over Lots on which Entry Features for Monument Falls are located for maintenance of the Entry Features. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owner's property, reasonable steps shall be taken to protect the property, and damage shall be repaired by the Person causing the damage at its sole expense.

## **Article XIII**

### **General Provisions**

**Section 1. Enforcement.** Each Owner and every Occupant of a Lot shall comply strictly with this Restated Declaration, the Restated By-Laws, any deed restrictions and all Construction Standards and rules and regulations which may be adopted by or on behalf of the Board of MFPOA, as any of the foregoing may be lawfully amended or modified from time to time. The Board of MFPOA may impose fines or other sanctions, which shall be collected as provided for the collection of Assessments. Failure to comply with this Restated Declaration, the Restated By-Laws, any deed restrictions and all Construction Standards and rules and regulations which may be adopted by or on behalf of MFPOA, as any of the foregoing may be lawfully amended or modified from time to time, shall be grounds for an action for damages or injunctive relief, or both, maintainable by the Board of MFPOA in a proper case. Failure by the Board of MFPOA to enforce any of the foregoing provisions shall not be a waiver of the right to enforce those provisions in the future.

**Section 2. WindSong Provisions.** Any provisions of this Restated Declaration to the contrary notwithstanding:

**a** To the extent any other provisions of this Restated Declaration provide controls, limitations, rights, entitlements or prohibitions which are applicable with regard to the lots which are located within the WindSong development or to the Owners thereof, neither MFPOA nor its Board or Committees nor any Lot Owner in Monument Falls shall have any right or authority to exercise such controls, limitations, rights, entitlements or prohibitions with regard to such WindSong Lots or Owners except with regard to (i) the obligations of such WindSong Lots or Owners to pay to MFPOA Common Assessments, Special Assessments and those Specific Assessments which are described in Article VI, Section 2 of this Restated Declaration, (ii) the rights of MFPOA to levy Assessments against such WindSong Lots or Owners relative thereto, and (iii) the rights of MFPOA to enforce the provisions of Section 4 of Article VII hereof with regard to the operation within Monument Falls of the Vehicles of Owners. It is hereby recognized that the WindSong development has its own Declaration of Protective Covenants which independently provides similar and in certain respects more comprehensive controls, limitations, rights, entitlements and prohibitions and which will provide assurances that it shall be unnecessary for the MFPOA or its Board or Committees or Lot Owners in Monument Falls to exercise any such controls, limitations, rights, entitlements or prohibitions with regard to the WindSong Lots or Owners relative thereto.

**b** The configuration and location of the WindSong development are such that it is necessary for there to be a discrete sign, security gate and entry features placed at the entry to the WindSong development on the southwesterly side of Rimrock Road. By the execution of this Restated Declaration, MFPOA acknowledges its approval of such discrete sign, security gate and entry features.

**c** The Owners, successors-in-title, Occupants, contractors, agents and invitees of the WindSong development and all portions thereof are hereby granted and shall have the perpetual easement and right to traverse the Private Road system within Monument Falls and thereby to have vehicular and pedestrian access between the WindSong development and the public right-of-way of Monument Road. The provisions of this subsection c shall survive any termination of this Restated Declaration.

**d** The developer of the WindSong development has constructed Wiggly Lane as a private road within the WindSong development, as an extension of the existing Monument Falls Private Road system, connecting with Rimrock Road, and the Owners of Lots in the WindSong development or an association of such Owners shall be fully responsible for the construction and maintenance thereof. In no event shall MFPOA or Owners of Lots in Monument Falls have any responsibilities with regard to Wiggly Lane or the costs associated therewith or with regard to any association of such Owners as to the WindSong development or any portions thereof.

**e** The Owners and Occupants of Lots in the WindSong development are hereby granted and shall have the perpetual easement and right to connect with the telephone, electricity and emergency fire water service utility lines adjacent to the WindSong development within the right-of-way of Rimrock Road, and in no event shall MFPOA or Owners of Lots in Monument Falls have any responsibilities with regard to such utility extensions or the costs associated therewith. The provisions of this subsection e shall survive any termination of this Restated Declaration.

**f** A private residence has been constructed on one (Lot 3) of three contiguous Lots (Lots 1, 2 and 3) of the WindSong development, which are currently owned by the same Owner, and it is such Owner's current intention to consolidate the ownership of all three of these contiguous Lots as a single parcel of land. For as long as such Owner or his successors-in-title shall continue to own Lot 3 of the WindSong development and one or both of Lots 1 and 2 of the WindSong development, those Lots shall be subject to Assessments pursuant to this Restated Declaration as if they constituted one Lot. In the event such Owner or any successor-in-title as to Lot 3 of the WindSong development shall convey or transfer the ownership of either or both of Lots 1 and 2, the Person(s) acquiring such Lot(s) shall become Owner(s) for the purposes of this Restated Declaration and Member(s) of MFPOA, and such Lot(s) thereafter shall be subject to Assessments from and after the date of the conveyance or other transfer of title of such Lot(s) with the provisions of this subsection f no longer being applicable with regard to any Lot so conveyed or transferred. At such time as such Owner or his successors-in-title shall no longer own Lot 3 of the WindSong development and at least one of Lots 1 or 2 of WindSong, such Owner or his successors-in-title as to Lot 3 of the WindSong development shall continue to be an Owner and a Member of MFPOA for the purposes of this Restated Declaration as to said Lot 3 of the WindSong development and the provisions of this subsection f shall thereafter be inapplicable for all purposes.

**g** The developer of the WindSong development currently owns the remaining nine contiguous Lots (Lots 4 through 12) of the WindSong development, and it is such developer's intention to convey each and all of such Lots to purchasers as soon as market conditions permit. Such developer shall not constitute an Owner for the purposes of this Declaration, and thus shall not be a Member of MFPOA, nor shall such Lots be subject to Assessments pursuant to this Restated Declaration for as long as they continue to be owned by such developer. As and when such WindSong Lots are conveyed by such developer to individual purchasers, each such purchaser shall become an Owner for the purposes of this Restated Declaration and a Member of MFPOA, and each Lot so conveyed shall thereafter be subject to Assessments pursuant to this Restated Declaration from and after the date of the conveyance or other transfer of the title thereto, with the provisions of this subsection g no longer being applicable with regard to any Lot so conveyed. As and when all of such WindSong Lots are conveyed by such developer to individual purchasers, the provisions of this subsection g shall thereafter be inapplicable for all purposes.

**Section 3. Duration.** The covenants, restrictions and easements of this Restated Declaration shall run with and bind Monument Falls, and shall inure to the benefit of and shall be enforceable by MFPOA and its respective legal representatives, heirs, successors, and assigns perpetually to the extent permitted by law; provided, however, that so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Restated Declaration affected by the law shall run with and bind the land for an initial term of twenty (20) years, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless at least fifty-one percent (51%) of the Owners execute a document to terminate the covenants containing a legal description of the entire area affected by the covenants, a list of all Owners affected by the covenants and a description of the covenants to be terminated or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting any termination must be recorded prior to, but no sooner than two years immediately preceding, the beginning of a twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any interest (including, without limitation, a security interest) in any property subject to this Restated Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Restated Declaration may be extended and renewed as provided in this Paragraph.

**Section 4. Amendment.** This Restated Declaration may be amended by the Board of MFPOA unilaterally at any time and from time to time as follows: (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule or regulation or judicial determination with which it is in conflict; (b) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Restated Declaration; (c) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Restated Declaration; or (d) if an amendment is necessary to assure the availability of governmental or quasi-governmental fire, police or emergency services to Monument Falls and its Owners and Occupants; provided, however, that any such amendment shall not adversely affect the title to any Owner's Lot unless the Lot Owner consents to the amendment in writing. In addition, this Restated Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least sixty-seven (67%) percent of the total MFPOA membership interests, and (b) material amendments to this Restated Declaration also must be approved by Eligible Holders who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held, insured or guaranteed by Eligible Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Holder shall be deemed implied and consented to if the Eligible Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested. All amendments to this Restated Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment.

**Section 5. Security.** The Board of MFPOA may, but shall not be required to, provide measures or take actions which directly or indirectly improve safety in Monument Falls. However, each Owner, for himself and his Occupants, family, guests, invitees, contractors and agents acknowledge and agree that the Board of MFPOA is not a provider of security and shall have no duty to provide security for Monument

Falls. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide security shall lie solely with each Owner. Neither the MFPOA nor the Board of MFPOA shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

**Section 6. Dispute Resolution.** Any and all disputes of an Owner or Occupant pursuant to the provisions of this Restated Declaration must first be brought to the attention of the Compliance Committee, by written notice for investigation and resolution. If the Compliance Committee cannot resolve amicably any dispute brought to its attention, the Compliance Committee will give written notice to the Owner or Occupant and to the Board of MFPOA requesting a meeting with the Board of MFPOA. The Owner or Occupant must attend such meeting to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against MFPOA, the Board of MFPOA, any director, or any agent of MFPOA. The Owner or Occupant shall, at the hearing, make a good faith effort to explain the grievance to the Board of MFPOA and resolve the dispute in any amicable fashion, and shall give the Board of MFPOA a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a meeting, the Board of MFPOA shall give notice of the date, time and place of the meeting to the person requesting the meeting. The Board of MFPOA shall schedule this meeting for a date no less than seven (7) and no more than twenty-one (21) days from the date of receipt of the notice from the Owner or Occupant requesting the meeting.

**Section 7. Partition.** The Private Street and Entry Features shall remain undivided, and no Lot Owner or any other Person shall bring any action for partition or division of the whole or any part of the Private Street and Entry Features without the written consent of all Owners and all holders of all Mortgages encumbering any portion of Monument Falls.

**Section 8. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 9. Severability.** Whenever possible, each provision of this Restated Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Restated Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Restated Declaration are declared to be severable.

**Section 10. Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.



**Section 11. Preparer.** This Restated Declaration was prepared by Alexander S. Clay, Esq., McRae & Bisbee, LLP, Suite 800, One Georgia Center, 600 W. Peachtree Street NW, Atlanta, Georgia 30308. In no event shall the preparer of this Restated Declaration or his law firm be liable to the Owners, Occupants or Mortgagees of any of the Lots or other portions of Monument Falls or to MFPOA for the contents, provisions, covenants, prohibitions, limitations or other substance of this Restated Declaration or for the validity, invalidity or enforceability thereof.

**Section 12. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Restated Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then only said provision will be voided and all other terms and conditions shall remain valid and unchanged.

**Section 13. Indemnification.** To the full extent allowed by Georgia law, MFPOA shall indemnify and hold harmless the Board of MFPOA and every other Person who is party or who is threatened to be made a party to any threatened, pending, or contemplated action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of MFPOA), by reason of the fact that such person is or was serving as an Officer or Member of MFPOA, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such Person acted in a manner reasonably believed by such Person to be in or not opposed to the best interests of MFPOA and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

**Section 14. Emergency Services.** By accepting the conveyance of a Lot, each Owner acknowledges and agrees that the Private Street within Monument Falls is a private street which is not maintained by Pickens County, and that due to the percentage of grade of the Private Street within Monument Falls (i) Pickens County cannot guarantee accessibility to Owners, Occupants, and all family, guests, invitees, contractors, subcontractors and agents thereof for county, public or emergency vehicles beyond the public right-of-way of Monument Road, and (ii) MFPOA cannot assure accessibility to Owners, Occupants, and all family, guests, invitees, contractors, subcontractors and agents thereof for county, public or emergency vehicles.

**Section 15. Utility Services.** By accepting the conveyance of a Lot, each Owner acknowledges and agrees that while the Private Street will be constructed in a manner designed to provide for the availability of underground trunk electricity and telephone services to the Lots, subject to the payment by the Owners of applicable connection and user charges to the service providers, there will be no natural gas service, public water service or sewer service available to the Lots. Accordingly, the Owner of each Lot will need to drill a well to provide for water service, install an approved septic tank system to provide for sewer service and (if desired) install a propane tank to provide an alternative to natural gas service. MFPOA can not assure the availability of any utilities to any Lot, and each Owner is encouraged to fully investigate the availability of such services prior to the purchase of a Lot.

**Section 16. Notice of Sale or Lease.** In the event an Owner sells or leases his or her Lot, the Owner shall give to MFPOA, in writing, the name and mailing address of the purchaser or lessee of the Lot and such other information as the Board of MFPOA may reasonably require.

**Section 17. Agreements.** All agreements and determinations, including settlement agreements regarding litigation involving MFPOA, lawfully authorized by and on behalf of MFPOA, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in Monument Falls or the privilege of possession and enjoyment of any part of Monument Falls.

**Section 18. Implied Rights.** MFPOA may exercise any right or privilege given to it expressly by this Restated Declaration, the Restated By-Laws, the Articles of Organization, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

**Section 19. Notices.** All notices given pursuant to or in the context of any of the provisions of this Restated Declaration shall be effective when delivered in person or by commercial courier or on the third (3<sup>rd</sup>) business day following the posting thereof by U.S. Mail, Certified and Return Receipt Requested, addressed to the addressee at the principal residence or place of business of such addressee or at such other address as such addressee shall theretofore have designated for notices to be sent.

**Section 20. Addresses of Owners.** It shall be incumbent upon each Owner to provide to MFPOA the mailing address of such Owner, from time to time, to which any notices should be sent by MFPOA to such Owner. In the event any Owner has not provided such a mailing address to MFPOA, MFPOA shall be authorized to send any notices to that Owner to whatever address the Board of MFPOA reasonably determines to be either the principal residence of such Owner or the address to which tax bills are then being sent with regard to any Lot then owned by such Owner.

IN WITNESS WHEREOF, the undersigned has executed this Restated Declaration under seal as of the day and year indicated below.

Signed, sealed and delivered  
this 31<sup>st</sup> day of January, 2004  
in the presence of:

Elmer D. Herrard  
WITNESS

[Signature]  
NOTARY PUBLIC

My Commission Expires: July 9, 2007

MONUMENT FALLS PROPERTY  
OWNERS ASSOCIATION, INC.

By: [Signature]  
Its: President  
(SEAL)



## **EXHIBIT "A"**

### Legal Description of Monument Falls Subdivision

ALL THAT TRACT or parcel of land lying and being in Land Lots 152, 172, 173, 188, 189 and 208 of the 5<sup>th</sup> District, 2<sup>nd</sup> Section of Pickens County, Georgia, as shown on the plats of survey recorded at Plat Book AA, Page 107, Plat Book AA, Pages 207-218, Plat Book BB, Pages 130-139, Plat Book CC, Pages 233-239, and Plat Book DD, Pages 141-143, in the Official Records of Pickens County, Georgia.

**EXHIBIT "B"**

**CONSENT OF MEMBER**

**FOR VALUE RECEIVED**, the undersigned Member of Monument Falls Property Owners Association has executed this Consent of Member under seal as of the day and year indicated below affirming the consent and agreement of the undersigned: (a) to subject Lot(s) or Tract(s) *[mark through whichever is inappropriate]* \_\_\_\_\_, of \_\_\_\_\_ Subdivision, including the improvements constructed or to be constructed thereon, to that certain Declaration of Restated and Supplemental Protective Covenants for Monument Falls, dated \_\_\_\_\_, 2004, filed for record \_\_\_\_\_, 2004 in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Pickens County, Georgia Public Records (the "Restated Declaration"); and (b) for all of \_\_\_\_\_ Subdivision to be subject to the Restated Declaration.

Signed, sealed and delivered  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
in the presence of:

*[Printed Name]*

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
(SEAL)  
Member of Monument Falls Property  
Owners Association

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "B"**

**CONSENT OF LENDER**

**FOR VALUE RECEIVED**, the undersigned lender, under seal, having an interest in Lot(s) or Tract(s) *[mark through whichever is inappropriate]* \_\_\_\_\_, of \_\_\_\_\_ Subdivision, including the improvements constructed or to be constructed thereon (the "Property"), by reason of its rights as the holder of a Deed to Secure Debt or Security Deed (the "Security Deed") recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Pickens County, Georgia Public Records: (a) hereby consents and agrees to the Property being subjected to that certain Declaration of Restated and Supplemental Protective Covenants for Monument Falls (the "Restated Declaration"), dated \_\_\_\_\_, 2004, filed for record \_\_\_\_\_, 2004 in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Pickens County, Georgia Public Records; and (b) hereby subordinates its rights under the Security Deed to the Restated Declaration.

Signed, sealed and delivered  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
in the presence of:

*[Printed Name]*

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

(CORPORATE SEAL)

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

## **EXHIBIT “C”**

The following words as used in the foregoing Restated Declaration shall have the definitions as hereinafter set forth:

“Annual Meeting” shall mean the Annual Meeting of Members of MFPOA held each year pursuant to and governed by the Restated By-Laws.

“Articles of Organization” shall mean the Articles of Organization for MFPOA, as filed with the Secretary of State of Georgia.

“Assessments” shall mean collectively the Common Assessments, Special Assessments and Specific Assessments described in Article IV of this Restated Declaration.

“Board” shall mean the Board of MFPOA, as governed by the Restated By-Laws.

“Common Assessments” shall mean those Assessments established by the Board of MFPOA pursuant to the provisions of Section 3 of Article IV of this Restated Declaration, the amount of which shall be annually established prospectively, equally allocated among the Owners of the Lots and required to be paid by the Owners to MFPOA on an annual basis.

“Compliance Committee” shall mean that certain committee appointed by the Board of MFPOA to continually assess and monitor compliance of the Owners to this Restated Declaration and the Monument Falls-Wide Standard.

“Construction Standards” shall mean those general guidelines and requirements to be complied with with regard to all Structures and other improvements constructed on Lots, as specifically set forth in Section 1 of Article X of this Restated Declaration, and as revised, amended or restated from time to time by the Board of MFPOA.

“Eligible Holder” shall mean any Mortgagee which has given an appropriate notice to MFPOA pursuant to the first sentence of Article XI, Section 1 of this Restated Declaration; provided, however, that no such Mortgagee shall continue to be an Eligible Holder once the Mortgage held, insured or guaranteed by such Mortgagee has been paid in full.

“Entry Features” shall mean those improvements already or hereafter constructed by MFPOA which comprise the entries into Monument Falls off connecting roadways, including, without limitation, any security gates, landscaping, lighting or signage.

“Lot” shall mean a residential parcel of land within Monument Falls or WindSong .

“MFPOA” shall mean **Monument Falls Property Owners Association, Inc.**, a Georgia non-profit corporation formed in 1996.

“Majority” shall mean at least fifty-one percent (51%) of the voting rights of the Members of MFPOA.

“Member” shall mean a member of MFPOA, as described in Article III, Section 1 of this Restated Declaration.

“Monument Falls” shall mean the **Monument Falls Subdivision**, which is all the real property more fully described in **Exhibit “A”** attached hereto.

“Monument Falls-Wide Standard” shall mean those rules and regulations for the ownership, operation, use and maintenance of the Lots and the Private Street and Entry Features which shall be established and revised from time to time by the Board of MFPOA, in its discretion, and which shall be complied with by all Owners and Occupants of the Lots and their families, guests, lessees, contractors, subcontractors, agents and invitees.

“Mortgage” shall mean any deed to secure debt or security deed conveying legal title to a Lot to secure a loan made to the Owner of that Lot, including any amendments thereof.

“Mortgagee” shall mean the lender of a loan secured by a recorded Mortgage encumbering a Lot, including any insurer, guarantor or assignee thereof.

“Nominating Committee” shall mean that certain committee appointed by the Board of MFPOA to develop a list of Members who agree to run for election to serve as Directors on the Board of MFPOA and to serve as Officers of MFPOA.

“Occupant” shall mean any Person other than an Owner who shall occupy as his or her temporary or permanent residence a Structure constructed on any Lot.

“Original Declaration” shall mean the Original Declaration of Covenants, Conditions and Restrictions established on March 8, 1996 and recorded in Deed Book 250, Page 102, Pickens County Records, as amended and supplemented from time to time.

“Owner” shall mean any Person who or which shall be the owner of the fee simple title to any Lot and who, as such, shall be a Member of MFPOA.

“Permissible Building Areas” shall mean those areas within the Lots which are specifically defined in Article X, Section 1 of this Restated Declaration.



“Person” shall mean any individual person or entity who or which from time to time shall have any rights or obligations under or affected by this Restated Declaration.

“Private Street” shall mean the sixty foot (60') wide right-of-ways of those certain streets shown on the Subdivision Plats of Monument Falls owned by MFPOA and which provide perpetual easement rights of ingress and egress as an appurtenance to the ownership of the Lots.

“Restated By-Laws” shall mean the Amended and Restated By-Laws for Monument Falls Property Owners Association, Inc.

“Restated Declaration” shall mean the within Declaration of Restated and Supplemental Protective Covenants for Monument Falls, as its shall be amended from time to time in accordance with the provisions hereof, including all Consent of Member forms which shall be executed and recorded with the Restated Declaration and also subsequent to the date hereof in accordance with the provisions hereof.

“Roads Committee” shall mean that certain committee appointed by the Board of MFPOA to continually assess the status of the Private Street and Entry Features and oversee any required repair or maintenance of the Private Street and Entry Features.

“Special Assessments” shall mean those Assessments established by the Board of MFPOA pursuant to the provisions of Section 4 of Article IV of this Restated Declaration, the amount of which shall be equally allocated among the Owners of the Lots and required to be paid by the Owners to MFPOA as and when levied pursuant to the said Section 4 of Article IV.

“Specific Assessments” shall mean those Assessments established by the Board of MFPOA pursuant to the provisions of Section 5 of Article IV of this Restated Declaration, the amount of which shall be levied against specific Owners for the purposes set forth in the said Section 5 of Article IV and required to be paid immediately following any notice to an Owner relative thereto.

“Structure” shall mean any roofed and walled building constructed or erected on any Lot.

“Subdivision Plats” shall mean the subdivision plats for Monument Falls as recorded in Plat Book AA, Page 107, Plat Book AA, Pages 207-218, Plat Book BB, Pages 130-139, Plat Book CC, Pages 233-239, and Plat Book DD, Pages 141-143, Pickens County Records, together with any restatement or amendment thereof as may be hereafter established and recorded by MFPOA from time to time.

“Supplemental Restated Declaration” shall mean any supplement to this Restated Declaration which shall hereafter be established from time to time and recorded by MFPOA.

“Undersigned Members” shall mean those Members of MFPOA who have executed a Consent of Member in the form attached to the within Restated Declaration.

“Vehicles,” shall mean any automobiles, trucks, station wagons, vans, sports utility vehicles, campers, recreational vehicles, motor homes, motorcycles, minibikes, bicycles, tricycles, scooters, go-carts, all-terrain vehicles, golf carts or other types of carts, boat trailers and any other types of trailers, and all other similar devices for the transportation of Persons or objects, including any appendages thereto.

“WindSong ” shall mean that certain exclusive gated residential community adjacent to Monument Falls as shown on Plat Book OO, Pages 115 through 119, Pickens County Records.