

After Recording Return To
Lawrence S. Sorgen
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P.O. Box 67
Hiawassee, GA 30546

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE PRESERVE AT CROOKED CREEK**

This Declaration of Covenants, Condition, and Restrictions for The Preserve at Crooked Creek (hereinafter referred to as "Subdivision") is made this _____ day of _____, 2007, by MIA PROPERTIES, LLC, a Georgia Limited Liability Company, hereinafter referred to as "Declarant".

WITNESSETH:

Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "the Property"). Declarant intends to impose upon the Property these covenants, conditions and restrictions under a general plan of improvement and development for the benefit of all owners of property within the Subdivision. Declarant desires to provide for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such property as is now or may hereafter be submitted to this Declaration.

The Declarant's present intention, stated here for information of present intent only and not as a warranty or representation of a future fact, is to develop or allow others to develop a Subdivision for residential purposes to be conveyed in fee simple title. This Declaration and By-Laws of the Homeowner's Association hereinafter to be created set out the method of administration for the Subdivision.

Now, therefore, Declarant hereby declares that all of the property described in Exhibit "A" and any additional property as may by subsequent amendment be added and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the Property submitted to this Declaration and which shall be binding on the parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, successor-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I Definitions

1. "Additional Property" shall mean all that property and any as may be adjacent to or contiguous to the Property or property made a part of the subdivision which may be added to the Subdivision community in accordance with the terms of these covenants and restrictions. Property shall be deemed to be adjacent to or contiguous with property made a part of Subdivision if it physically connects to such property, at any point, or if it is separated only by a road, public or private, or water course, including any river, creek or lake.
2. "Architectural Review Board" shall mean and refer to the Board shall initially be the Declarant, upon seventy(75%) percent of lots sold shall mean the initial board appointed by the Declarant for a one year term, and thereafter shall be the Board as annually elected by the Homeowner's Association.
3. "Association" shall mean and refer to The Preserve at Crooked Creek Property Owners' Association, Inc. The Association shall be incorporated as a non-profit corporation within twelve (12) months of the date of recording of these Covenants.
4. "Board of Directors" or "Board" shall be the elected body of the Association having its normal meaning under the Georgia Nonprofit Corporation Act. The first board shall be appointed by the Declarant and elected thereafter in accordance with the by-laws of the Association.
5. "Common Area" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the owners.
6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association and the Subdivision, including any reasonable reserve, all as may be imposed hereunder or found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws of the Association, and the Articles of Incorporation.
7. "Lot" shall mean a subdivided, platted and numbered portion of the Property, other than the Common Area, intended for independent use or ownership as a residential house site. Lots shall be shown on the plat(s) of survey filed with this Declaration or amendments hereto or may be further described in any other recorded plat.
8. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.
9. "Mortgage" include a deed to secure debt, or security deed, as well as a mortgage, and a "first mortgage" is a first priority deed to secure debt, deed of trust, or mortgage.
10. "Mortgagee" shall include a beneficiary or holder of a deed to secure debt, deed of

trust, as well as a mortgagee. A "first mortgage" is the holder of a first priority deed to secure debt, deed of trust or mortgage on a Lot or Residential Unit.

11. "Mortgagor" shall include the grantor of a deed of trust, as well as a mortgagor.

12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of any Lot which is part of the Property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

13. "Person" means a natural person, a corporation, a partnership, trustee, or other legal entity.

14. "Phase" shall mean the increments of property (1) described in Exhibit "A" and, (2) subjected to this Declaration by any Amendments or Supplemental Declarations, each such described property being a separate Phase.

15. "The Property" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer to such Additional Property as may hereafter be annexed by Amendment or Supplemental Declaration to this Declaration or which is owned in fee simple by the Association.

16. "Voting Rights" shall mean that for each lot owned the "Owner" as defined in Section 12 above shall have one vote per lot owned.

ARTICLE II General Covenants

A. LAND USE

1. All lots are for single family residential purpose only. Only one (1) residence shall be erected on any lot, provided however, that the owner of any lot may erect a garage or guest house, or a detached outbuilding, for use in connection with such residence, so long as such garage, outbuilding, or guest house is constructed using substantially the same construction materials as the residence, has the same exterior finish, and is architecturally compatible with such residence.
2. No lot, dwelling or structure shall be used for any commercial activity or business which solicits the presence of the general public for the purpose of purchasing and/or selling goods or services. Private home offices shall not be considered a violation of this restrictive covenant so long as the aforesaid criteria is maintained. Furthermore, nothing herein contained shall prohibit the inviting of prospective buyers to any lot or residence for the purpose of selling such lot or residence. Renting a house shall not be deemed commercial activity.

3. After conveyance by the Declarant, no lot shall be subdivided.
4. Only site built homes will be allowed on any lot. Modular or Manufactured Homes as defined in O.C.G.A. 8-2-160 may be allowed if and only if approved by the Declarant or Architectural Review Board. No mobile homes shall be placed temporarily or permanently upon any lot or in the subdivision, except that the Declarant, builders, and realtors may have a construction or sales trailers on site.
5. No junk, trash, rubbish or hazardous materials or waste, or any thing which emits foul or obnoxious odors, shall be kept, stored, or buried upon any lot. Nor shall any thing which causes repetitive noise which disturbs the peace, quiet, comfort, or serenity of the occupants of the neighboring properties be allowed upon any lot. Permanent home generators shall be allowed so long as installed for use in emergencies or when the regular electrical power source is out.
6. No part of this Property or any improvements situated thereon shall be put to any commercial industrial or manufacturing use. No use is allowed which may become an annoyance or nuisance to the neighborhood or which may be offensive by reason of odor, fumes, dust, smoke, noise, vibration or pollution, or which is hazardous or which creates an excessive danger of fire or explosion.
7. The parking of buses, truck, and other vehicles rated higher than one ton is prohibited in the Subdivision and on its roads.
8. No motorcycles, four wheelers, dirt bikes and or other vehicles with external engines shall be permitted to ride along the streets of said subdivision except as may be necessary to enter and exit the subdivision. All such vehicles in use on any lot shall be sufficiently muffled so as not to disturb the neighborhood. Golf carts are not prohibited.
9. No camper, motor home or R.V. shall be parked temporarily or permanently on any subdivision road. No camper, motor home or R. V. shall be parked temporarily or permanently on any lot unless completely enclosed inside a garage or completely out of site from any subdivision road or home inside the subdivision, except to quickly load or unload such unit.
10. No utility trailer, no wrecked, unlicensed (untagged), or nonoperational motor vehicle, and no household appliances, shall be kept in a location in which the same can be viewed by lot owners or from the subdivision roads. Further, no trash, garbage, or rubbish or other waste shall be kept upon any lot except in closed sanitary containers which must be placed behind the houses and out of view from the street except on garbage pick up day.
11. No lot shall be used in whole or in part for any illegal activity nor for the storage of any property or thing that will cause any lot to appear in any unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance be kept upon any lot that will disturb

the peace, comfort or serenity of the occupants of surrounding property.

12. No signs of any type shall be displayed to public view on any portion of said property except one sign of not more than 36 inches by 36 inches advertising property for sale or a temporary builders sign, or such permits as required by law. All said signs shall be professionally lettered and neatly installed. Declarant reserves the right to erect entrance signs.
13. No animals, birds, or fowl shall be kept or maintained on any part of the property except ordinary household pets (i.e. dogs, cats and pet birds) which may be kept thereon in reasonable number as pets for the pleasure and use of the occupants. No animal shall be kept on any size lot for any commercial purpose.
14. No wire fencing (including but not limited to electric wire, barbed wire, hog wire, and chicken wire), nor vinyl fences, nor fences with steel posts shall be installed on any portion of the property subject to these covenants. Any and all fences constructed or erected upon the property shall be made only of wood (and which must be of wood link design; meaning two or three horizontal wood members with even spacing between them and connected to each vertical post or member), and must be first approved in accordance with Article II, Section B of this Declaration. Nothing contained herein shall be deemed to prohibit Declarant or the Architectural Review Board from approving other fence materials or designs.
15. All lots must be maintained and kept mowed. Upon the failure of the owner to maintain and keep mowed any such lots, the Declarant or the Association shall be entitled to reasonably maintain and/or mow the same and to assess the Owner for the reasonable cost thereof.
16. No more than 50% of existing trees over five (5) inches in diameter shall be removed from any lot after being conveyed by the Declarant without the Declarant's written permission, or the homeowners association after Declarant sells seventy-five (75%) percent of the lots.
17. All lawn and other equipment and tools, including lawn mowers, blowers, tractors, edgers, tillers and the like, must be kept in an enclosed storage area when not in use.
18. No mining or drilling for oil, gas, or other minerals is to be allowed.
19. All electrical and other utility lines shall be placed underground and all water supply and sewage disposal facilities shall comply with the applicable governmental codes. No satellite dishes over eighteen (18) inches in diameter shall be allowed on any lot.
20. Declarant, for the benefit of Declarant and Declarant's successors and assigns, reserves the absolute exclusive, continuing and nonexclusive right and easement to construct, erect,

place, repair, maintain and replace from time to time along any present or future constructed common roadway, any utility lines, pipes, conduits, devices, implements or related components, fixtures, apparatuses and assemblages that are reasonable, appropriate and useful in furnishing and satisfying the residential utility uses and needs of the Property and the lots, including but not limited to the following utility purposes and services; electricity, water, sewer, telephone, cable, and other reasonable and ordinary utility right purposes and uses. This reservation shall include the right of Declarant to grant and convey reasonable necessary and appropriate licenses, permits and easements to other third persons or entitles in order to accomplish the intents and purposes of this provision.

21. No lot shall be accessed other than by the roads inside the subdivision without written permission from Declarant. No road shall be built to access any adjoining property without written permission from the Declarant. **Exception:** The Declarant may access, by the subdivision roads, property owned or property hereafter acquired by Declarant which adjoins or is adjacent to The Preserve at Crooked Creek if the Declarant owns the property being crossed to access adjoining property. Declarant may extend the subdivision roads for purposes of accessing adjoining property owned by Declarant.

B. ARCHITECTURE & CONSTRUCTION

1. No structure, building or other improvement (including without limitation exterior remodeling and repainting) shall be constructed, erected, placed, modified or altered on any lot until building plans and specifications and a site plan showing the locations of all proposed improvements and landscaping have been submitted and approved in writing by the Declarant or Architectural Review Board. In evaluating the plans, the Board shall seek to assure conformity and harmony of external design with existing structures in the Subdivision.
2. Approved Plans shall not be effective for construction to be commenced more than twelve (12) months after such approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. In the event that approval of such plans is neither granted nor denied within thirty (30) days following receipt by the Declarant or the Architectural Review Board of a written request for approval, the applicant may send a demand for action by certified mail, and, if the application is neither granted nor denied within ten (10) days of receipt of such demand, the provisions of this Section shall be thereby waived by the Declarant or the Architectural Review Board and the Association, but only with respect to that application.
3. Refusal of approval of plans, location, or specifications, may be based by the Declarant or Architectural Review Board upon any reasonable ground which is consistent with the objectives of these Covenants including but not limited to aesthetic considerations. The Architectural review process shall not be conducted in an arbitrary and capricious manner.
4. Architectural and design review shall be directed toward attaining the following objectives

for the Community:

- a. Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar landforms.
 - b. Ensuring that the location and configuration of structures is visually harmonious with the terrain and vegetation of the dwelling lots and with surrounding dwelling lots and structures and does not unnecessarily block scenic views from existing structures or tend to dominate any general development or natural landscape.
 - c. Ensuring that the architectural design of structures and their material and colors are visually harmonious with the Community's overall appearance, with surrounding development, with natural landforms and native vegetation, and with development plans, officially approved by the Declarant or any governmental or public authority, for the areas in which the structures are proposed to be cited.
 - d. Ensuring that the plans for landscaping provide visually pleasing setting for structures on the same lot and on adjoining or nearby lots, and blend harmoniously with the natural landscape.
 - e. Ensuring that any development, structure, building or landscaping complies with the natural landscape.
 - f. Promoting building design and construction techniques that respond to environmental quality consideration such as energy conservation, air emissions, and run-off water quality and quantity.
5. If the Architectural Review Board denies the application of a Property Owner, the Property Owner may appeal such action to the Board of Directors of the Association with thirty (30) days after such action. The Board of Directors shall provide an opportunity to hear the case of the Property Owner and a representative or agent of the Architectural Review Board within thirty (30) days of the receipt of the appeal. The decision of the Board of Directors shall be issued within fifteen (15) days after the hearing of the appeal. The decision of the Board of Directors shall be final. The initial board for architectural review shall be appointed by the Declarant on or before seventy-five (75%) percent of lots are sold. The initial appointed board shall stand for a one (1) year period and thereafter shall be elected by the Homeowner's Association.
6. Building Standards. The Architectural Review Board may promulgate standards through bulletins making reference to various national, regional, statewide or local building standards, fire safety standards and other building codes which must be followed in architectural designs submitted to the Declarant. If adopted, said standards shall be

published by the Architectural Review Board or the Association and shall be made available to any Property Owner.

7. Approval not a Guarantee or Representation of Property Design or Good Workmanship. No approval of plans, location or specifications, and no publication of architectural standards bulletins by the Architectural Review Board shall ever be constructed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence or that such standards comply with any local, state or federal rule, ordinance, statute or law. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence will be built in a good workmanlike manner. No implied warranties of good workmanship, design, habitability, quality, fitness for a particular purpose or merchantability shall arise as a result of any plans specifications, standards or approvals made by the Declarant, the Association or the Architectural Review Board.
8. Liabilities for Approvals Granted or Denials Issued by the Architectural Review Board or the Association. Neither the Architectural Review Board nor the Association, nor the Declarant, shall be liable to a Property Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against a property owner or such other person arising out of or in any way relating to this subject matter of any review acceptances, inspections, permissions, consents or required approvals which must be obtained from the Architectural Review Board or the Association whether given, granted or denied.
9. Only site built homes will be allowed on any lot. Modular or Manufactured homes may be allowed as provided in paragraph four (4) of the Property Rights section of these covenants.
Each residence shall be constructed with at least 1800 square feet of heated living space exclusive of any carport, garage, basement, deck, patio or porches. If a residence has more than one story, the first floor must contain at least 1200 sq. feet of heated living space. No residence shall have more than two stories of heated living area excluding basements.
10. Primary roofing materials must be architectural shingles, cedar shakes, approved factory painted metal or slate. All roofs must have a minimum pitch of 8/12 excluding porches and dormers. All roofs shall be dark shades including, but not limited to, charcoal gray, black, brown. No white, light or bright colored roofs shall be allowed.
11. Primary residential siding materials shall be brick, hardy-plank siding, stone or stucco. No log construction, log siding, or wood siding shall be allowed unless approved in writing by the Architectural Review Board. No vinyl siding, shakes or shingles may be used on any structure.
12. All colors for siding, windows, roofs and trim, etc. must be confined to earth tone colors which are compatible with the natural environment and approved by the Declarant or

Architectural Review Board. No bright or loud colors will be allowed. All concrete blocks and poured concrete walls used on any residence must be covered with either brick, stone or stucco.

13. Each residence must have a minimum of a two car garage. Any attached or detached garage, guest house or outbuilding must be constructed using substantially the same material as the residence, have the same exterior finish and be architecturally compatible with such residence.
14. No structure shall be erected or placed on any lot closer to the front, side, or back lots lines than the minimum building set back line shown on the recorded plat or survey reflecting such lot. Where two or more lots are acquired as a single building site, the setback lines shall be the outermost lines which border the adjoining lots.
15. Prior to any construction or grading on any lot, all necessary erosion control measures must be installed and properly maintained until all work has been completed and the site has been stabilized. No drainage ditches, cuts, swales, streams, impoundments, ponds or lakes, no mounds, knobs, dams, or hills and no other physical improvements or elements of the landscape or terrain which control or determine the location or flow of surface water and drainage patterns may be created, destroyed, altered or modified without the prior written consent of the Declarant or Homeowners Association, whether on private or common area. Special attention shall be given to prior site surface drainage so that surface waters will not interfere with surrounding home site and natural drainage flows. Paved areas shall be designed to allow surface water to drain naturally and not to allow water to collect or stand.
16. To prevent mud and other debris from being tracked onto the street, a construction drive must be installed and adequately graveled prior to beginning construction on the foundation and maintained until the permanent drive is complete. All permanent drives must be hard surfaced (i.e. asphalt, concrete, pavers, etc.) from the garage to the street before the home is occupied.
17. Landscaping must be completed prior to occupancy of any residence. Completed landscaping means that all areas are covered with natural growth, grass, shrubs, trees, sod, or seed covered with straw. No bare dirt shall be exposed except during construction.
18. There is no time frame for a property owner to build on any lot, however, once construction has started, all work must be pursued diligently and the exterior must be completed within 12 months. Landscaping as discussed in paragraph 17 above shall be completed within six (6) months of the exterior being completed.
19. Homeowners shall be responsible for the acts of their employees, sub-contractors, suppliers and other persons or parties involved in construction or alteration of a home site. In this regard, homeowners shall be responsible for ensuring:
 - a. That the construction site is kept clean and free of debris and waste material.

- b. That stockpiles of unused materials are kept in a neat and orderly fashion.
 - c. That a freestanding, enclosed toilet (Port-a-Pot) be installed on the lot prior to beginning construction of the primary residence and removed as soon as residence is completed.
 - d. That no lot clearing debris or waste material is disposed of by burying on any lot.
20. Any damage to subdivision roads or other common property during construction of a home shall be the sole responsibility of the homeowner to pay for repairs. A determination of the Declarant up and until seventy-five (75%) of lots are sold shall be conclusive and final. In the event Declarant determines the subdivision roads were damaged by a homeowner and assessment by the Declarant may attach to the homeowner's lot.
21. All fuel storage tanks, outdoor pools, utility lines (including electrical, telephone, gas, water and cable television) or any wire or pipe shall be installed and maintained underground. Any compressors for central air conditioning units and play equipment must be located where it will have a minimum visual impact on adjacent properties.
22. Mail receptacles must be constructed with similar material as used on the exterior of the main residence and/or approved by the Declarant.

C. INITIAL FEES AND DEPOSITS

1. In regard to the initial sale of any lot by Declarant, there shall be an initial initiation fee of Five Hundred (\$500.00) Dollars paid by the Purchaser which shall be placed in an account by Declarant to be used for improvements and other matters relating to the development of the subdivision at the Declarant's sole discretion.
2. Upon the initial sale of any lot by Declarant, Declarant shall deposit the sum of \$2,000.00 out of the net proceeds of sale into the aforementioned account to be used for improvements and other matters relating to the development of the subdivision, at Declarant's sole discretion.
3. Upon the sale by Declarant of seventy-five (75%) percent of the lots, any funds remaining in the account shall be turned over to the Association, and all common areas, if not previously conveyed to the Association at the election of Declarant, shall be conveyed to the Association.
4. Declarant hereby appoints Boldrewood, LLC, a limited liability company organized under the laws of the State of Georgia, to be the sole and exclusive agent of Declarant responsible

for establishing, maintaining and managing the aforementioned account with the right to make disbursements therefrom for the purposes herein stated.

ARTICLE III

The Association

A. ADMINISTRATION

1. Designation. The Board of Directors shall be the officers of the Association. The principal officers of the Association shall be a President, Vice-President, and a Secretary and Treasurer. One person may hold more than one office and the officers shall be selected in accordance with the by-laws. The officers of the Association shall be elected for a two (2) year term. The Board shall have the right to appoint assistant officers and designate their respective duties and who will serve at the pleasure of the Board. Every lot owner shall be a member of the Association. Notwithstanding the foregoing, for so long as Declarant owns at least twenty-five (25%) percent of the lots in the subdivision no Board action shall be binding upon the members without the approval of Declarant.
2. Rules and Regulations. The Association, through its Board of Directors, shall have the right to make and enforce reasonable rules and regulations governing the use of the Lots and of the Common Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration.
3. Liability. The officers and directors shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance, willful malfeasance, willful misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent, if any, that they may be liable as members of the Association) and the Association, as a common expense of the Association, shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. In addition, each director and each officer of the Association shall be indemnified and held harmless by the Association, as a common expense of the Association, from any expense, loss, or liability by reason of having served as such director or as such officer and against all expenses and liability, including court costs and reasonable attorney's fees incurred by or imposed upon such director or officer in connection with any proceedings to which such officer or director may be a party or have become involved by reason of being such director or such officer, whether or not such person is a director or officer at the time such expenses are incurred, except in cases wherein the expenses and liability arise from a proceeding in which such director or such officer is adjudicated guilty of willful misfeasance or willful malfeasance, willful misconduct or bad faith in the performance of the duties of the office so held. In the event of a settlement of any such proceeding, the indemnification provided hereby shall apply only when the Board of Directors approves such settlement and

reimbursement as being the best interests of the Association. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. To the extent available and economically feasible, the Association shall as a common expense maintain adequate general liability and officers' and directors' liability insurance to fund these obligations.

4. Compensation. No director or officer of the Association shall receive any fee or compensation for service performed by him unless such fee or compensation is first fixed by resolution adopted by a majority of all the votes in the Association.

B. ASSESSMENTS.

1. Purpose of Assessments. The assessments for common expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the residential Lots.
2. Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot, or dwelling by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:
 - (a) Annual assessments, such assessments to be established and collected as provided in Section B. 3 hereof,
 - (b) Special assessments, such assessments to be established and collected as provided in Section B. 4 hereof, and
 - (c) Individual or specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to fines that may be imposed against such Lot in accordance with Section C hereof. Any such assessment, together with late charges, interest at the highest rate allowable under the laws of the State of Georgia and court costs and attorney's fees incurred to enforce such assessment, shall be an equitable charge and a continuing lien upon the Lot against which each such assessment is made. Each Owner shall be personally liable for such Owner's portion of each assessment coming due while such Owner is the Owner of a Lot or dwelling Lot, and such Owner's successor-in-title shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, but without prejudice to the rights of such successor-in-title to recover from the grantor in the deed to such successor-in-title the amount paid therefor; provided, however, that the liability of such a successor-in-title for the unpaid assessments of its grantor shall not apply to the holder of any first priority mortgagee or any second priority purchase money mortgagee taking title to a Lot or dwelling Lot, through foreclosure or by deed in lieu of foreclosure. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors.

3. Computation of Annual Assessment. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated common expenses of operating the Association during the forthcoming year, such budget to include a capital contribution or reserve account in accordance with the capital needs of the Association. The Board shall cause the budget and the proposed annual assessments to be levied against each Lot for the following year to be delivered to each Owner at least ten (10) days prior to such meeting. Except as otherwise provided in this Declaration, the annual assessments shall be equally divided among the Lots so that the annual assessments shall be the same for each Lot. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by a vote of a majority of the votes of the Owners who are voting in person or by proxy. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for any reason, then the Board may call a meeting of the Association for approval of a special assessment as provided in Sub-Section 4 hereof. The common expenses of the Association to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

- (a) utility charges for utilities serving the Common Area and charges for other common services for the Development, including trash collection;
- (b) the cost of any master or blanket policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire and other hazard coverage, public liability coverage and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners.
- (c) the expenses of maintenance, operation and repair of the Common Areas, as well as any maintenance of the Lots and the improvements thereon which is the responsibility of the Association under the provisions of this Declaration;
- (d) charges for water, sewer and other utility services to the Lots, other than telephone charges, unless such water, sewer, or other utility charges are separately metered or allocated;
- (e) ad valorem real and personal property taxes assessed against the Common Area;
- (f) management fees and expenses of administration, including legal and accounting fees;
- (g) such other expenses as may be determined from time to time by the Board of Directors of the Association to be common expenses; and

- (h) the establishment and maintenance of a reasonable reserve fund or funds (a) for maintenance repair and replacement of those portions of the Common Area and the Lots which are the responsibility of the Association and which must be replaced on a periodic basis, and (b) to cover unforeseen operating contingencies of deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.
4. Special Assessments. In addition to the annual assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for common expenses, applicable to that year only by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Sub-Section 6 hereof. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the Association's fiscal year in which adopted.
5. Individual Assessments. Any expenses occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of the Owner of any Lot or dwelling Lot shall be specially assessed against such Lot or Lots or dwelling Lot or Lots, the conduct of the occupants (or their agents) of which occasioned such expenses. The individual assessments provided for in herein shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be specified by the Board.
6. Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized hereunder shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast over fifty percent (50%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called on a date not more than 60 days after the preceding meeting subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. If a quorum is not present at such meeting those present at such subsequent meeting may adjourn the meeting to a date not less than five nor more than ten days thereafter and not less than the day following such subsequent meeting and send a written notice thereof to all members. Those present at such adjourned meeting shall constitute a quorum regardless of their number.
7. Lien for Assessments. All sums assessed against any Lot or dwelling Lot pursuant to this Declaration, together with court costs, reasonable attorney's fees, late charges and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or dwelling Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot except for:

- (a) liens of federal, state and local taxes; and
- (b) a lien for all sums unpaid on a first priority mortgage, on any secondary home equity mortgage, and all amounts advanced pursuant to any such mortgage and secured thereby in accordance with the terms of such instrument.

All persons (other than the mortgagees described hereinabove) acquiring liens or encumbrances on any Lot or dwelling Lot after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or any portions thereof which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as may be determined by the Board from time to time, and the board shall cause a written notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. A lien and equitable charge as herein provided for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days after the giving of such written notice, the entire unpaid balance of the assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment shall include the late charge established by the Board of Directors, interest on the principal amount due at the maximum rate allowable under the laws of the State of Georgia, all costs of collection (including reasonable attorney's fees and court costs) and any other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association shall have the right, as the Board shall determine to institute suit to collect such amounts and to foreclosure its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners, and each Owner, by such Owner's acceptance of a deed to a Lot or dwelling Lot, vests in the Association or its agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt or to foreclosure the aforesaid lien in the same manner as other liens involving property may be foreclosed under the laws of the State of Georgia. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot or dwelling Lot at any foreclosure or sheriff's or marshal's sale and to acquire, hold, lease, mortgage, and convey the same. No Owner shall have the right to waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Area or abandonment of such Owner's Lot.
9. Date of Commencement of Annual Assessments. Unless otherwise provided by the Board, the annual assessment shall be paid on or before January 15 of each calendar year.

10. Exemption for Declarant. Notwithstanding anything else contained herein to the contrary, and in consideration of Declarant's initial and continuing capital investment in the subdivision and the improvements therein, any and all lots titled in the name of Declarant, improved or unimproved, except for any such lots upon which may be located a home or other building occupied, for residential purposes, on a full time basis, or made available for rent by Declarant, shall be exempt from assessments. Without limiting the foregoing, any lot owned by Declarant upon which it causes the construction or maintains a residential structure for a sales office or for exhibit as a model home and/or "spec house" shall be deemed to be exempt from assessments.

C. RULE MAKING

1. Rules and Regulations. The Board of Directors may establish and from time to time alter, add to and amend reasonable rules and regulations concerning the use of individual Lots and dwelling Lots and of the Common Area and facilities located thereon which are consistent and not in conflict with, this Declaration and the Articles of Incorporation and By-Laws of the Association. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon all Owners, their families, tenants, guests, invitees, servants and agents unless and until any such rule or regulation is specifically overruled, cancelled or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Members, in person or by proxy, holding a meeting of the Association by the vote of the Members, in person or by proxy, holding a majority of the total votes in the Association.
2. Authority and Enforcement. As provided in Sub-Section 1 hereof, the Board of Directors shall have the authority to make, amend and enforce reasonable rules and regulations governing the conduct, use and enjoyment of individual Lots and dwelling Lots, and the Common Area, provided that copies of all such rules and regulations and amendments are furnished to all Owners. Subject to the provisions of Sub-Section 3 hereof, upon the violation of this Declaration, the By-Laws or any rules and regulations duly adopted hereunder, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute a lien upon the Lot or dwelling Lot, the occupants of which are guilty of such violation, (ii) to suspend an Owner's right to use recreational facilities within the Common Area, or (iii) to suspend an Owner's right to vote in the Association; the Board shall have the power to impose all or any combination of these sanctions. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter not to exceed thirty (30) days.
3. Procedure. Notwithstanding any provisions of this Declaration to the contrary, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other occupant of the Development for violations of the Declaration, the By-

Laws or any rules and regulations of the Association unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation is served upon the alleged violator specifying:

- (i) the nature of the alleged violation;
- (ii) the action required to abate the violation; and
- (iii) a time period of not less than ten (10) days during which the violator shall have the right to abate the violation without further sanction, if violation is a continuing one; or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanction after notice and hearing;

(b) Within twelve (12) months following such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently again occurs, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

- (i) the nature of the alleged violation;
- (ii) the time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice;
- (iii) an invitation to attend the hearing and produce any statement, evidence and witnesses on behalf of the violator; and
- (iv) the proposed sanction to be imposed.

The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford the violator reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or other individual who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE IV General Provisions

1. Amendments by Declarant. The Declarant reserves the right to amend this Declaration up to and until 75% of all lots subject hereto have been sold by Declarant.
2. Amendments by Association. Amendments to this Declaration shall be proposed and

adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by Owners holding at least three fourths (3/4ths) of the total votes in the Association; provided, however, that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee.
- (c) The agreement of the required percentage of the Owners and, where required, any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment.
- (d) Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

3. Duration. The provisions of this Declaration shall run with and bind title to the Property and all of the Lots, shall be binding upon and inure to the benefit of all Owners and mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect perpetually to the extent permitted by the laws of the State of Georgia; provided, however, that so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind title to the Property and each and every Lot so long as permitted by law, and it shall be the duty of the Board of Directors of the Association to cause this Declaration to be amended of record when necessary by filing a document bearing the signatures of Owners having a majority of the voting interest in the Association reaffirming and newly adopting the provisions of this Declaration in order that the same may continue to be covenants running with title to the Property and each and every Lot. Such adoption by a majority shall be binding upon all the Owners. Every purchaser or grantee of any interest in any property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property and every Lot as provided hereby.

4. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue in effect only until the twentieth anniversary of the date of execution of this Declaration.

5. Interpretation. In all cases, the provisions set forth or provided for in this Declaration

shall be construed together and given that interpretation or construction which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The effective date of this Declaration shall be the date of its filing for record on the deed records of the Superior Court of Towns County, Georgia. 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. This Declaration shall be construed under and in accordance with the laws of the State of Georgia.

6. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.
7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this 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 Declaration are declared to be severable.
8. Rights of Third Parties. This Declaration shall be recorded for the benefit of the Owners and their mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the provisions hereof and the rights of mortgagees as herein provided, the Owners shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.
9. Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases, mortgages or otherwise disposes of any Lot or any improvements thereon, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee or transferee.
10. Successor Declarant. Upon the sale, transfer or other conveyance by Declarant to Boldrewood, LLC, of all Declarant's remaining lots in the subdivision, Boldrewood, LLC, shall automatically become the Declarant with all of the rights and obligations of Declarant hereunder, replacing and succeeding to the interest of MIA Properties, LLC. Provided further, in the event that Declarant's lender that holds a first priority security interest on all of Declarant's lots exercises its power of sale as a result of default by Declarant under the obligations secured by the security instrument creating such power of sale, the purchaser at

any such non-judicial foreclosure shall be deemed to be the Declarant with all of the rights and obligations of Declarant hereunder, replacing and succeeding to the interest of MIA Properties, LLC.

ARTICLE V
Effect of This Declaration

1. Conflicts with Association Documents. In the event of a conflict between the provisions of this Declaration and the provisions of the Articles of Incorporation or By-Laws of the Association or any rules and regulations promulgated by the Association, the provisions of this Declaration shall control.
2. Effective Date. This Declaration shall become of full force and effect on the date and time of the recording hereof upon the deed records of Towns County, Georgia.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal on the date hereinabove set forth.

Executed and acknowledged
in the presence of:

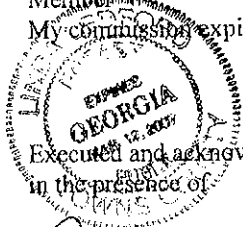
MIA PROPERTIES, LLC
(Declarant)

Trina K. Denton
Witness

By: Bill Manto
Bill Manto, Co-Managing Member

Dinda L. Hedford
Notary Public
Member
My commission expires:

By: Carl Edwards
Carl Edwards, Co-Managing


Executed and acknowledged
in the presence of:

BOLDREWOOD, LLC
(Successor Declarant)

Robert S. Savage
Witness

By: Jerald S. Savage
Jerald S. Savage, Managing Member

Jodi Greiner

Notary Public Jodi Cresswell
My commission expires: 8-10-2012

The foregoing Declaration is hereby consented to and the security interest of the undersigned in the real property subject to the provisions hereof.

Executed and acknowledged
in the presence of:

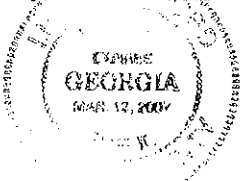
UNITED COMMUNITY BANK

Eason Whitman
Witness

By: [Signature]

[Signature]
Notary Public
My commission expires:

Attest: [Signature]
S/D



After Recording Return To
Lawrence S. Sorgen
Attorney at Law
P.O. Box 67
Hiawassee, GA 30546

Towns County, Georgia
Clerk's Office Superior Court
File for Record 5-11-
20 10, at 11:45 AM
Recorded 5-11-2010
In Book No. 474 Page 81
Cecil Dye, Clerk 82

**AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE PRESERVE AT CROOKED CREEK**

This Amendment to Declaration of Covenants, Condition, and Restrictions for The Preserve at Crooked Creek (hereinafter referred to as "Subdivision") is made this 10th day of May, 2010, by MIA PROPERTIES, LLC, a Georgia Limited Liability Company, hereinafter referred to as "Declarant".

WHEREAS, Declarant has heretofore caused the execution and recording of a Declaration of Covenants, Conditions and Restrictions for The Preserve at Crooked Creek, said Declaration being dated April 4, 2007, and recorded in Deed Book 401, Pages 817-838 of the Towns County Records; and

WHEREAS, prior to the initial sale of seventy-five percent (75%) of all lots subject to the Declaration and pursuant to Article IV, Section 1 of said Declaration, Declarant desires to amend the Declaration as provided for herein.

NOW THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for The Preserve at Crooked Creek as follows:

One: The provisions of Article II (General Covenants), Section B. 9. is hereby deleted in its entirety and in lieu thereof the provisions of said Section shall read as follows:

Modular or Manufactured homes may be allowed as provided in paragraph four (4) of the Property Rights section of these covenants. Each residence shall be constructed with at least 1400 square feet of heated living space exclusive of any carport, garage, basement, deck, patio or porches. If a residence has more than one story, the first floor must contain at least 900 sq. feet of heated living space. No residence shall have more than two stories of heated living area excluding basements.

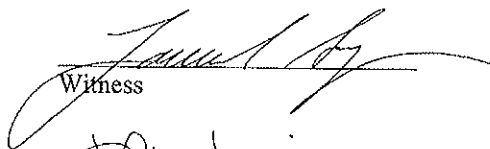
Two: Article II (General Covenants), Section C. 1., pertaining to initial initiation fees, is hereby deleted in its entirety.

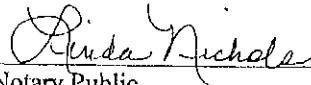
Three: Article II (General Covenants), Section C. 2., pertaining to Declarant's deposits, is hereby deleted in its entirety.

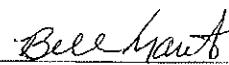
IN WITNESS WHEREOF the parties have hereunto set their hands and seals on the date hereinabove set forth.

Executed and acknowledged
in the presence of:

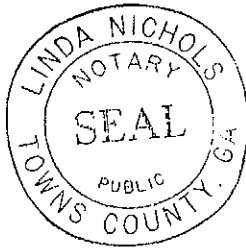
MIA PROPERTIES, LLC
(Declarant)


Witness


Notary Public
My commission expires: 8/14/10

By: 
Bill Manto, Co-Managing Member

By: 
Carl Edwards, Co-Managing Member



After Recording Return To:

Lawrence S. Sorgen
Attorney at Law
P.O. Box 67
Hiawassee, GA 30546

Towns County, Georgia
Clerk's Office Superior Court
File for Record 11-4-
20 10, at 11:58 AM
Recorded 11-4-2010
In Book No. 483 Page 682
Cecil Dye, Clerk 683

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE PRESERVE AT CROOKED CREEK**

This Amendment to Declaration of Covenants, Condition, and Restrictions for The Preserve at Crooked Creek (hereinafter referred to as "Subdivision") is made this 27th day of October, 2010, by MIA PROPERTIES, LLC, a Georgia Limited Liability Company, hereinafter referred to as "Declarant".

WHEREAS, Declarant has heretofore caused the execution and recording of a Declaration of Covenants, Conditions and Restrictions for The Preserve at Crooked Creek, said Declaration being dated April 4, 2007, and recorded in Deed Book 401, Pages 817-838 of the Towns County Records, as amended by Amendment thereto dated May 10, 2010, and recorded in Deed Book 474, Pages 81-82 of the Towns County Records; and

WHEREAS, prior to the initial sale of seventy-five percent (75%) of all lots subject to the Declaration and pursuant to Article IV, Section 1 of said Declaration, Declarant desires to amend the Declaration as provided for herein.

NOW THEREFORE, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for The Preserve at Crooked Creek as follows:

One: Article I (Definitions), Section 3 (Association) is amended to read as follows:

"Association" shall mean and refer to The Preserve At Crooked Creek Property Owners' Association, Inc. The Association may be incorporated as a non-profit corporation.

Two: Article I (Definitions), Section 5 (Common Area) is amended by adding thereto the following:

Nothing contained herein shall be deemed to prohibit Declarant from conveying, for private ownership, any "amenity area" shown on the plat of survey of the subdivision, which is not accessible by any subdivision road, to an adjoining property owner so as to be part of the respective adjoining lot.

Three: Article II (General Covenants), Section A. (Land Use), Subsection 7 is hereby amended to read as follows:

7. The parking of buses, commercial trucks, heavy construction equipment, or untagged or unregistered motor vehicles is prohibited in the subdivision and on its roads.

Four: Article II (General Covenants), Section B. (Architecture and Construction), Subsection 11 is hereby amended to read as follows:

11. Primary residential siding materials shall be brick, hardy-plank siding, stone, stucco or wood (including log siding). Nothing contained herein shall be deemed to prohibit the construction of a log home upon any lot provided that such home is otherwise in accordance with the provisions of this Declaration. No vinyl siding, vinyl shakes or vinyl shingles may be used on any structure.

Five: Article II (General Covenants), Section C. (Initial Fees and Deposits), Subsections 3 and 4 are hereby deleted (Subsections 1 and 2 having been deleted by the prior Amendment to the Declaration).

Six: Article IV (General Provisions), Section 10, is hereby deleted in its entirety.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals on the date hereinabove set forth.

Executed and acknowledged
in the presence of:

MIA PROPERTIES, LLC
(Declarant)

Witness

By: Bill Manto
Bill Manto, Co-Managing Member

Linda Nichols
Notary Public
My commission expires: 8-17-14

