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STATE OF NORTH CAROLINA	Return to Craig D. Justus, Van Winkle Law Firm
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**DECLARATION OF COVENANTS, RESERVATIONS AND RESTRICTIONS  
 OF GATEWAY MOUNTAIN SUBDIVISION**

**DECLARANT:** The Gateway Group, Inc., a North Carolina Corporation having its principle offices in McDowell County, North Carolina, hereinafter referred to as "*Declarant*".

**GATEWAY MOUNTAIN SUBDIVISION:** A privately owned subdivision located in McDowell County, Buncombe County and Rutherford County North Carolina and described by those certain recorded plats shown on Exhibit A attached hereto, and in such other recorded plats as may hereafter be recorded according to the provision of Article 8.1.

**PURPOSE:** The purpose of these covenants and restrictions is to provide for a safe, stable, attractive, and enjoyable residential community which will retain its character after full occupation, thereby maintaining the property values of the homes, and assuring the continued enjoyment of the common and private areas by all of the residents of Gateway Mountain Subdivision. Specific reference is hereby made to those *Declarations of Covenants, Reservations, and Restrictions* and Amendments thereto recorded in McDowell County, Rutherford County and in Buncombe County, North Carolina. It is the purpose and intent of these *Declarations of Covenants, Reservations, and Restrictions* to encompass completely, to replace and to supersede all of the *Declarations of Covenants, Reservations, and Restrictions* previously existing upon Gateway Mountain Subdivision as described above, whether or not said *Covenants, Restrictions, and Reservations* are specifically referenced herein, and to establish by this document a new regime of covenants consistent with the formerly existing covenants except as modified herein.

The undersigned *Declarant*, together with the Gateway Mountain Property Owners Association, Inc., by the affirmative vote of members representing sixty eight (68%) percent of the votes in the *association*, hereby amend the *Declaration of Covenants, Reservations, and Restrictions* to substitute in lieu thereof the following *Declarations of Covenants, Reservations and Restrictions* which shall hereafter bind each and every lot located within Gateway Mountain Subdivision, whether or not said lot is owned by the *Declarant* or by any individual *owner*. Said *Declarations of Covenants, Reservations, and Restrictions* are hereby amended, with respect to each lot, by virtue of the powers vested in the *Declarant* and in the Gateway Mountain Property Owners Association under the previously existing amendments referenced above. A record of the vote by which this amended Declaration is adopted is maintained in the official records of the *Association*.

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**ARTICLE 1**  
**DEFINITIONS**

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**1.1** **"Allocated interests"** means the *common expense liability* and votes in the *Association* allocated to each *lot*.

**1.2** **"Architectural Review Committee"** (ARC) is an entity created and constituted in Article 9 of the Bylaws with broad powers and responsibility to ensure that all construction conforms to covenants and restrictions and approved construction plans.

**1.3** **"Association", "Property Owner's Association" or "Owners' Association"** means Gateway Mountain Property Owners Association Inc., a non-profit corporation.

**1.4** **"Class A Lot"**, means a lot owned by a Class A Member (see Section 3.2)

**1.5** **"Common elements" or "Common Area"** means any real estate within Gateway Mountain Subdivision owned or leased by the *Association*, other than a *lot*.

**1.6** **"Common expenses"** means expenditures made by or financial liabilities of the *Association*, together with any allocations to reserves.

**1.7** **"Common expense liability"** means the liability for *common expenses* allocated to each *lot* as permitted by this *Declaration* or otherwise by law.

**1.8** **"Declarant"** means The Gateway Group, Inc. and includes any *person* or group of *persons* acting in concert with Gateway Group, Inc. who (i) as part of a common promotional plan, offers to dispose of the *Declarant's* interest in a *lot* not previously disposed of, or (ii) reserves or succeeds to any *special declarant right*.

**1.9** **"Declaration" or "Declaration of Covenants, Reservations and Restrictions"** means this instrument and any amendments to this instrument that created and governs Gateway Mountain Subdivision.

**1.10** **"Development rights"** means any right or combination of rights reserved by the *Declarant* in this *Declaration*, (i) to add real estate to the Gateway Mountain Subdivision; (ii) to create *lots*, *common elements*, or *limited common elements* within the Gateway Mountain Subdivision; (iii) to subdivide *lots* or convert *lots* into *common elements*; or (iv) to withdraw real estate from the Gateway Mountain Subdivision.

**1.11** **"Dwelling"** means a building situated upon a *lot* and intended for use and occupancy as the principle residential structure of the *lot*.

**1.12** **"Executive Board" or "Board"** means the Board of Directors of Gateway Mountain Property Owners Association.

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**1.13 "Gateway Design Guidelines"** means a collection of standards and guidelines developed and maintained by the *Association* that more specifically addresses design and construction issues, which are more generally addressed in the *Governing Documents*. The Document has the force and effect of *Rules* and *Regulations*.

**1.14 "Governing documents"** means this *Declaration*, By-Laws, Articles of Incorporation, *Gateway Design Guidelines*, *Rules* and *Regulations*, as they may be amended from time to time.

**1.15 "Impact fee"** means a one time charge for the general adverse impact on the roads system caused by heavy loads and special equipment required in constructing a residence.

**1.16 "Lessee"** means the party entitled to present possession of a leased *lot* whether *lessee*, *sub lessee*, or assignee.

**1.17 "Limited common element"** means a portion of the *common elements* allocated by this *Declaration* or by operation of law for the exclusive use of one or more but fewer than all of the *lots*.

**1.18 "Lot"** means a physical portion of Gateway Mountain Subdivision designated for separate ownership or occupancy by a *lot owner*.

**1.19 "Lot owner" or "owner"** means the record owner of a fee simple title to any *lot* in Gateway Properties, but does not include a person having an interest in a *lot* solely as security for an obligation. However, neither the *Declarant* nor the Gateway Mountain Property Owners Association, Inc. shall be an owner with regards to or connected with any and all obligations and duties to pay annual or special assessments as set forth in this *Declaration*. The *Declarant* shall nevertheless otherwise have full voting rights and all other rights attendant upon ownership in every other respect.

**1.20 "Member"** means any *person* or entity that holds membership with voting rights in the *Association*.

**1.21 "Person"** means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

**1.22 "Political Sign"** means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

**1.23 "Properties" or "Gateway properties"** means all of those properties listed and described on Exhibit A attached hereto, as well as any properties contained in deeds described in Book 164 Page 329 of McDowell County Registry, Book 444 at Page 595 of the McDowell County Registry, Book 447 at Page 778 of the McDowell County Registry, Deed Book 486 at Page 621 of the McDowell County Registry, and Deed Book 409 at Page 267 of the Rutherford County Registry, which may hereafter be platted by

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*Declarant*, their successors or assigns and thereby brought within the jurisdiction of the *Association* according to the terms hereof.

**1.24 "Proxy"** means a person designated by an owner to cast such owner's vote at a meeting.

**1.25 "Reasonable attorney's fees"** means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

**1.26 "Regulation"** means a formal written and official decision of the *Association* having external and general application which interprets or executes a provision of this *Declaration* or of the Bylaws.

**1.27 "Rule"** means an internal *regulation* setting forth the manner in which the *Association* shall exercise a power or responsibility delegated to it.

**1.28 "Special Declarant Rights"** means rights reserved for the benefit of a *Declarant* including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with this *Declaration* (ii) to exercise any *development right*; (iii) to maintain sales offices, management offices, signs advertising the Gateway Mountain Subdivision, and models; (iv) to use the easements through the *common elements* for the purpose of making improvements within the Gateway Mountain Subdivision or within real estate which may be added to the Gateway Mountain Subdivision.

**1.29 "Variance"** means a formal and recorded quasi-adjudicatory ruling of the *Association* that a particular *lot* qualifies for an exception to a general standard or requirement specified in the *Governing Documents*.

**1.30 "Western North Carolina and Appalachian Architecture"** means that architecture generally summarized in this section and more specifically described in "*Gateway Design Guidelines*" by the *Architectural Review Committee* in its exclusive discretion:

...

Although early Western North Carolina architecture was built in a range of nationally popular styles; a sense of a regional architectural character emerged by the early twentieth century. This style is expressed in a preference for picturesque, romantic, and rustic designs and natural materials. Another strong influence in this style are the materials and construction techniques repeating elements of the familiar log structures and fieldstone chimneys that local residents were still building in the early twentieth century. (*Excerpted from pages 59 through 84 of A Guide to Historic Architecture of Western North Carolina, by Catherine W. Bishir.*)

**ARTICLE 2**  
**PROPERTY RIGHTS**

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**2.1 Owners' Easement of Enjoyment:** Every *owner* shall have a right and easement of enjoyment in and to the *common area*, including roads, which shall be appurtenant to and shall pass with the title of every *lot*, subject to the following provisions:

- (a) The right of the *Association*, pursuant to Section 7.7 of this *Declaration*, to suspend the voting rights and right to use the *common areas* by an *owner* for any period during which any assessment against his *lot(s)* remains unpaid. The *Association* may also suspend such rights for a reasonable period not to exceed sixty (60) days for any infraction of its published *rules* and *regulations* or of this *Declaration*.
- (b) The right of the *Association*, with affirmative approval of at least eighty percent (80%) of the votes in the *Association*, to dedicate or transfer all or part of the *common area* to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the *members*.
- (c) The right of the *Association* to impose *regulations* for the use and enjoyment of the roads, *common area* and improvements thereon, which *regulations* may further restrict the use of the *common area*.
- (d) Easements, restrictions, reservations and rights-of-way as set out herein.
- (e) The right of the *Declarant* or the *Association*, as set out herein to increase the number of *lots*, whose *owners* may utilize the roads and *common areas*.
- (f) No portion of any of the *Gateway property* shall be used as a road right-of-way or easement for the purpose of connecting any adjoining property which is not a part of the *Gateway property* or which is not in process of being developed as *Gateway property* by the *Declarant*.

**2.2 Delegation of Use.** Any *owner* may delegate, in accordance with the *Bylaws*, his rights of enjoyment of the *common area* and facilities to the *members* of his family or his tenants. In any case, the rights to and enjoyment of the *common area* and facilities shall be limited to those *persons* actually having a possessory or ownership interest. Extension of these rights to guests or invitees of such occupants shall be subject to *rules* and *regulations* imposed by the *Association*.



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**ARTICLE 3**  
**MEMBERSHIP AND VOTING RIGHTS**

**3.1 Membership.** The *Declarant* and every *lot owner* shall be a *member* of the *Association*. Membership shall be appurtenant and may not be separated from ownership of any *lot*.

**3.2 Voting.** The *Association* shall have two (2) classes of membership:

(a) **Class A:** Class A membership shall consist of all *lot owners* as defined herein, except the *Declarant*. Each *Class A lot owner* shall have one (1) vote for each *lot* owned, except that an *owner* of a group of *lots* that share a common boundary with any *lot* in the group of *lots*, or with either side of a road right-of-way, such *owner* shall vote one vote for the group of *lots* as if the group of *lots* were just one *lot*. When more than one *person* holds an interest in any *lot*, all such *persons* shall be *members*, but all such *persons* shall constitute only one *lot owner*. The vote for such *lot* shall be exercised as the common *owners* among themselves may determine. In any regular or special meeting, any one of such common *owners* present may, without *proxy*, and in the absence of protest by any other common *owner* of such *lot*, cast the vote attributable to all common *owners*.

(b) **Class C:** There shall be one (1) Class C *member*, which shall be the *Declarant* or any one who has by operation of law succeeded to *Declarant* interests. The Class C *member* shall have one (1) vote for each acre or major fraction thereof owned by the *Declarant* and shown on a recorded plat as part of the Gateway Mountain Subdivision. For purposes of this Section the *Declarant* shall be deemed owner of property brought into Gateway Mountain Subdivision subject to contract with the actual *owner* thereof allowing the *Declarant* to market said property as part of the Gateway Mountain Subdivision, provided, however, that the Class C *member* shall have no more than three (3) votes for any one (1) platted *lot* even though such *lot* may contain more than three and one-half (3 1/2) acres.

**ARTICLE 4**  
**ASSESSMENTS**

**4.1 Assessments for Common Expenses.**

(a) Except for assessments under subsections (b), (c) and (d) of this section, all *common expenses* shall be assessed against all the *Class A lots* in accordance with the allocations set forth in this *Declaration*. Any past-due common expense

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assessment or installment thereof bears interest at the rate established by the *Association* not exceeding eighteen percent (18%) per year.

(b) To the extent required by this *Declaration*:

- (1) Any *common expenses* associated with the maintenance, repair, or replacement of a *limited common element* shall be assessed against the *lots* to which that *limited common element* is assigned, equally.
- (2) Any common expense or portion thereof benefiting fewer than all of the *lots* shall be assessed exclusively against the *lots* benefited.

(c) Assessments to pay a judgment against the *Association* may be made only against the *lots* in the Gateway Mountain Subdivision at the time the judgment was entered, in proportion to their common expense liabilities.

(d) If any common expense is caused by the negligence or misconduct of any *lot owner* or occupant, the *Association* may assess that expense exclusively against that *lot owner* or occupant.

(e) If common expense liabilities are reallocated, assessments and any installment thereof not yet due, shall be recalculated in accordance with the reallocated common expense liabilities.

**4.2 Obligation for Assessments.** Each *lot owner*, for each *lot* owned within the property, hereby covenants, and each *lot owner*, 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 the *Association* the following Assessments:

- Annual Assessments,
- Special Assessments for the purposes provided in this *Declaration*, and
- Individual *Lot* Assessments for any charges particular to the *lot*.

**4.3 Purpose of General Assessments.** The General Assessments levied by the *Association*, both Annual and Special, shall be used exclusively for the improvements, maintenance and operation of the road system and other *common areas*, and for the management and administration of the *Association*. Such expenses include the cost of wages, materials, insurance premiums, services, supplies and reasonable amounts, as determined by the *Board*, for working capital and for reserves.

**4.4 Annual Assessment.** It shall be a duty of the *Board* at least forty-five days prior to the commencement of a fiscal year to prepare and adopt a budget covering the estimated costs of operating the *Association* and the *Association properties* during the coming year. Within thirty (30) days after the adoption of the proposed budget, the *Board* shall provide to all *members* a summary of the budget, the proposed total annual assessment and assessment rate to be levied against *properties* subject to this *Declaration* for the following year, and a notice of a meeting to consider the budget and assessment. Such

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meeting shall be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If the amount of assessment exceeds that of the last approved assessment it must be approved by an aggregate vote of sixty-seven (67%) percent of the votes of all Class A and C *members* taken together, who are voting in *person* or by *proxy* at the meeting. Notwithstanding the foregoing, in the event that the membership does not approve any assessment increase or the *Board* fails for any reason to determine the budget for the succeeding year, then the budget and assessments last approved by the *lot owners* shall be continued until such time as the *members* approve a subsequent budget and assessment proposed by the *Board*.

**4.5 Special Assessments.** In addition to other authorized assessments, the *Association* may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any Special Assessment must have the approval of sixty-seven (67%) percent of the vote of Class A and C *members*, taken together, who are voting in *person* or by *proxy* at a meeting duly called for that purpose. Such meeting shall be held not less than ten (10) or more than sixty (60) days after mailing of the meeting notice. Special Assessments shall be payable in such manner and at such times as determined by the *Board* and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**4.6 Rate of Annual and Special General Assessments.** Annual maintenance and special assessments shall be fixed at a uniform rate for all *lots* owned by Class "A" *owners*. The initial annual assessment shall be \$385.00 per *lot* for FY 2007 (June 1, 2006 through May 31, 2007). Provided that an *owner* of a group of *lots* that share a common boundary with any *lot* in the group of *lots*, or with either side of a road right-of-way that abuts any of such *lots*, shall be assessed as if such multiple contiguous *lots* were one *lot*.

**4.7 Quorum Requirement for Action Authorized under Sections 4.4 and 4.5.** At the first such meeting called, the presence of *owners* or of proxies entitled to cast sixty (60%) percent of the aggregate of all of the votes of Class A and C membership along with authorized representation of the *Declarant* shall constitute a quorum. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in *person* or by *proxy*. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. This provision shall continue to reduce the quorum by fifty (50%) percent from that required at the previous meeting, as previously reduced, until such time as a quorum of not less than ten percent (10%) of the *Association* votes is present and business can be conducted. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**4.8 Dates of Commencement of Annual General Assessments: Due Date**

- (a) **First Year of Ownership.** The first Annual General Assessment for Class A *lots* shall be adjusted and paid at settlement according to the number of months remaining in the fiscal year.

- (b) **Subsequent Years.** The *Board* shall fix the amount of the Annual General Assessment for each *lot* as provided in Section 4.6 above. The due dates shall be established by the *Board*, and unless the *Board* determines otherwise, each *owner* shall be required to pay the stated assessment in a single, annual installment. The failure or delay of the *Board* in setting the assessment level shall not constitute a waiver or release of an *owner's* obligation to pay the Annual General Assessment whenever the amount of such assessment is finally determined, and in the absence of notice of the new assessment level, each *owner* shall continue to pay the assessment at the previous rate until notified otherwise.

**4.9 Individual Lot Assessments.** The *Association* may levy at any time an Individual *Lot* Assessment against a particular *lot* for any charges authorized by this *Declaration*, the Bylaws or North Carolina Law, including but not limited to charges when applicable for:

- (a) Removing from a *lot* debris that can be seen from the streets or other *lots*. Such debris is defined as leftover building materials, downed trees, material *lot* clearing, or other offensive material not present when the *lot* was purchased,
- (b) Expenses incurred by the *Association* in causing to be performed an *owner's* duty to keep his or her *lot* and all improvements in reasonable order and repair when an *owner* fails to perform this duty. For this purpose "reasonable order and repair" means improvement, maintenance, and repair of the *lot* with all improvements, including the exterior of buildings, in a condition comparable to the condition of such improvements at the time of its initial construction, excepting only normal wear and tear,
- (c) Such charges as may be authorized by the Bylaws and which may be particular to an individual *lot*, including but not limited to assessments for damage and subsequent repairs to common roadways and common property caused during construction or improvements on an *owner's lot*, to include a general *impact fee*, and
- (d) Miscellaneous other fees, charges, late charges, fines, interest imposed pursuant to the Bylaws and Sections 4.1 and 7.7 of this *Declaration*.

None of these charges may be treated as a general expense but may be assessed as a Specific *Lot* Assessment along with either of the general assessments.

**4.10 Effect of Nonpayment of Assessments; Remedies of the Association.**

- (a) **Late Fees; Interest.** Any assessment not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. The *Association* may also impose reasonable charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice

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and an opportunity to be heard, suspend privileges or services provided by the *Association* (except rights of access to *lots*) during any period that assessments or other amounts due and owing to the *Association* remain unpaid for a period of 30 days or longer.

- (b) **Nature of Obligation.** All assessments, whether general, special or individual *lot* assessments, along with any late fee, interest and costs of collection when delinquent (including *reasonable attorney's fee*, whether or not suit is brought) shall be charges on the land and shall be a continuing lien upon the *lot* to which the charges relate. In addition, all such assessments and charges shall be the personal obligation of the *person* or entity who was the *owner* of such *lot* at the time when the assessment was levied, and of each subsequent *owner*. Each *owner*, by acceptance of title, expressly vests in the *Association* the right and power to bring all actions against such *owner* personally for the collection of the charges as a debt and to enforce the charges by all methods available for the enforcement of liens, including foreclosure by an action brought in the name of the *Association* in a like manner as a foreclosure of a mortgage lien on real property. No *owner* may waive or otherwise escape liability by abandonment of the *lot* to which the assessments or charges relate.
- (c) **Action on Lien.** The lien provided for in this Section shall be in favor of the *Association* and shall be for the benefit of all other *owners*.
- (d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.
- (e) This section does not prohibit other actions to recover the sums for which this Article creates a lien or prohibit the *Association* taking a deed in lieu of foreclosure.

During any period in which any part of a regular or special assessment is delinquent, the delinquent *owner's* right to vote in any regular or special meeting of the *Association* shall be suspended in accordance with procedures set forth in Section 7.7 of this *Declaration*.

**4.11 Subordination of the Lien to Mortgages.** The lien of the *Association* provided for herein shall be subordinate to the first mortgage lien of any Bank, Savings and Loan Association or other institutional mortgage. A sale or transfer of any *lot* pursuant to foreclosure of such a mortgage or any proceeding in lieu thereof shall extinguish the lien of such Assessments which became due prior to such sale or transfer. A voluntary sale or transfer of any *lot* shall not affect the assessment lien, however. No sale or transfer shall relieve the transferees of such *lot* from liability for any assessments becoming due thereafter or from the lien for such new assessment.

**4.12 Division of Assessments.** Notwithstanding the provisions of Sections 1 through 11, for any *owner* whose *lot* is accessed by a roadway not yet conveyed to the *Association*,

all annual assessments may at the option of the *Declarant* be assessed by and may be collected by the *Declarant* and not the *Association*. With respect to such *lots* only, all of the rights and remedies of said *Association* shall inure to the sole benefit of the *Declarant*, including the specific remedies listed in this Article as if the *Declarant* were specifically named therein as the *Association*. All such regular assessments assessed by and collected by the *Declarant* shall be divided equally by the *Declarant*, and one-half of said assessments shall be payable to the *Association*. In addition, during any period in which *Declarant* owns a roadway, which has not been conveyed to the *Association*, *Declarant* shall pay to the *Association* an additional sum of \$300.00 per month as payment for use of the subdivision roadways.

**4.13 Collection of Assessments.** Notwithstanding the foregoing, all special assessments shall be assessed by and collected by the *Association* in accordance with this Article. The right of *Declarant* to assess and collect annual assessments against certain *lot owners* shall not impair or impede such *lot owners* from voting and otherwise participating fully in the affairs of the Gateway Mountain Property Owners Association, Inc.

## ARTICLE 5 ARCHITECTURAL CONTROL AND STANDARDS

**5.1 Purpose.** It is the intent and purpose of this Article that Gateway Mountain Subdivision shall be developed so that all of the property values will be enhanced by the consistent use of *Western North Carolina and Appalachian Architecture* and design. To this end architectural review shall be conducted by the *Architectural Review Committee (ARC)* as constituted in the Bylaws, for the benefit of the subdivision as a whole, and shall not necessarily be constrained by the design of existing homes.

**5.2 Architectural Control Standards.** The *ARC* shall develop standards (*Gateway Design Guidelines*) that more specifically define and implement the architectural design and construction contemplated and generally set forth in this *Declaration*, and shall adopt procedural *rules* by which all of its decisions and actions shall be governed. The *ARC* shall adopt *regulations* that interpret or implement the general purposes of architectural control and restrictions set forth in this Article. All general *rules*, *regulations* and standards adopted by the *ARC* must be approved by the *Board* of Directors before they may take effect. All general *rules* and subsequent amendments thereto shall be organized, numbered and maintained in the *Association* office in such a manner that *members* may readily review and copy them, and they shall be open to inspection and copying by *members* of the *Association* during normal business hours.

**5.3 Construction Subject to Review.** No construction, improvement, building, structure or development of any kind whatsoever, including any driveway providing ingress and egress to and from a common road, shall be commenced, carried on, constructed, altered, added to or maintained upon any *lot* unless approved in writing by

the *ARC*, as to harmony of external design, location in relation to surrounding structures and topography, driveway construction standards and other appropriate considerations as set out herein. The *ARC*'s refusal or approval of plans, specifications, materials, colors or location of any structure may be based upon any ground, including purely aesthetic considerations, which are consistent with the objectives and purposes of this *Declaration* and with the *Gateway Design Guidelines*. Notwithstanding that improvements meet or exceed specified minimum size requirements, the quality and attractiveness of every structure must also meet high neighborhood standards and the *ARC* is hereby granted broad discretion in judging the compatibility of proposed structures for the neighborhood. The *ARC* will disapprove metal structures. It will disapprove simple box or rectangular structures that do not have added architectural interest through extensive covered porches, decks, roof detail or other significant architectural features that add character to simple forms. The *ARC* will disapprove driveway construction plans that do not meet requirements specified in *Gateway Design Guidelines*, to protect the roadways or other *lots* from damage due to inadequate drainage. The *ARC* shall also have the right to determine the type, size and number of structures which may be constructed on a *lot*. The *ARC* shall use as a guide the *Gateway Design Guidelines*, as that code is amended from time to time. In the event that *ARC*, or the *Board* acting in its stead, fails to approve or disapprove a plan within sixty (60) days after said plans and specifications have been submitted to it in accordance with all requirements of *ARC rules* and *regulations*, approval shall be deemed given and this Article will be deemed to have been fully complied with. Nothing herein shall be construed to require *ARC* approval for *Declarant* to install driveways during *lot* development.

**5.4 Building Specification.** No *dwelling* shall hereafter be erected or placed on any *lot* other than one detached single-family *dwelling* containing not less than 1275 square feet of heated, covered floor space, exclusive of open porches, garages, and outbuildings incidental to the residential use of the *lot*. "Outbuildings incidental to the residential use of the *lot*" means those structures other than the principal residence, listed, described or limited in *Gateway Design Guidelines*. *ARC* will not approve any above ground swimming pool.

**5.5 Building Set-Backs.** No part of any porch, step, deck or foundation of a building or other structure shall be erected or placed upon any *lot* within forty (45) feet from the center of a road or within twenty (20) feet from a side or rear *lot* line.

**5.6 Construction.** Once footers, foundation or septic system is begun, all construction on any *dwelling* or outbuilding allowed by these restrictions and approved by the *Architectural Review Committee* shall be externally completed, within eighteen (18) months. After thirty (30) days written notice to any party not so completing the construction, the Committee or any *owner* may petition the court for an order to remove any material from the *lot*.

**5.7 Variance.** Subject to written approval by the *Board*, the *ARC* may authorize *variances* from compliance with any of its guidelines and from restrictions contained in this Article, when circumstances such as topography, natural obstructions, hardship,

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architectural merit, or aesthetic or environmental considerations require, but only in accordance with duly adopted *rules* and *regulations*. Such *variances* may be granted however, only when unique circumstances dictate. No *variance* may be granted which would prevent *ARC* from denying a *variance* in other circumstances. For purposes of this section, inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of financing shall not be considered a hardship warranting a *variance*. The petition for a *variance* must be submitted in writing and contain all information the *Architectural Review Committee rules* require. If neither granted nor denied within 60 days after receipt of the petition by *ARC*, the petition shall be deemed denied unless an appeal is made directly to the *Board* and the *Board* grants the requested *variance*. To be effective, a *variance* hereunder shall be executed on behalf of the *Association*, be approved by the *Board*, shall refer specifically to this *Declaration*, and shall be recorded in the county in which the deed is recorded. The *variance* must be written by the *ARC* or the *Board* and recorded at the *lot owner's* expense.

**ARTICLE 6**  
**USE RESTRICTIONS**

**6.1 Single-Family Residential Use.** All *lots* shall be used, improved, and devoted exclusively to single family residential use with only one principle residential structure per *lot*. No multi-family *dwellings* or commercial or business uses shall be permitted. Nothing herein shall be deemed to prevent an *owner* from leasing a *lot*, subject to all provisions of this *Declaration* and to *regulations* of the *Association*, or from conducting any legal ancillary business or home office when such activities are not detectable by sight, sound, or smell from outside the *lot* and does not otherwise constitute a nuisance or hazard to residents.

**6.2 Nuisances.** No noxious or offensive activities shall be conducted upon any *lot*, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. All *lots* shall be kept clear of accumulations of brush, trash, junk, building materials and inoperable vehicles.

**6.3 Animals and Pets.** No animals, livestock, or poultry of any kind may be kept or permitted on any *lot* except that dogs, cats and other usual household pets may be kept in reasonable number, provided that they are not kept, bred or maintained for any commercial or illegal purpose and do not endanger the health of or unreasonably disturb *lot owners*. The *Board* of Directors may, by adoption of *rules* and *regulations*, (i) prohibit animals which are determined by the *Board* to be dangerous or detrimental to the health, safety and welfare of the *lot owners* and (ii) prohibit or restrict any pet from travel upon or use of the *common areas*. Such *rules* and *regulations* may prohibit animals as to size, weight or type when such characteristics reasonably relate to the purposes to which these restrictions pertain. In the event any pet becomes a nuisance or a threat, in the opinion of the *Board*, it shall be removed from the *properties*.



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**6.4 Motor Vehicles and Water Craft.**

- (a) **Vehicles.** The *Board* shall have the power to place any reasonable restrictions upon the use of roadways or waterways. This includes but is not limited to the types and sizes of vehicles, including motor cycles, or water craft, the maximum and minimum speeds of vehicles, all necessary traffic and parking *regulations*, and the maximum noise level of vehicles.
- (b) **Parking.** Motor Vehicles may be parked only in designated parking areas in accordance with *rules* and *regulations* of the *Association*.
- (c) **Inoperable Vehicles.** No stripped, partially wrecked, or junked motor vehicle, or part thereof, may be parked or kept on any *lot*. All motor vehicles of any type kept on any *lot* shall be kept in good running repair and shall have current registration and, if applicable, current inspection certificate. Repair of vehicles within the *properties* is permitted only within an entirely closed garage.

**6.5 Mining, Drilling, Excavation, and Quarrying.** No oil or gas drilling or mineral mining, excavating, tunneling or quarrying shall be permitted on any *lot* by any *person* or corporation.

**6.6 Trailers, Tents, and Mobile Homes.** No trailer, tent or camper, present or former mobile home, motor home, shack, garage, barn or non-residential outbuilding parked, placed or erected on any *lot* shall at any time be used as a residence temporarily or permanently. However, an *owner* of a completed *dwelling* may store such recreational vehicles as a motor home, camper or boat on his or her *lot* so long as it is not visible from other *lots* or from the roads. Proper screening may be required.

**6.7 Signs.** No signs, flags, statues, or other such object shall be displayed to public view on any *lot* or in the *common area* except by the *Declarant* and except those which specifically comply with this section or are approved by the *Architectural Review Committee* as being compliant with *rules* and *regulations* set by the *Association* and approved by the *Architectural Review Committee*, except that

- (a) the flag of the United States and the flag of North Carolina, of a size no greater than four feet by six feet may be displayed exclusively on property owned by the *member*, provided that the flag of the United States must be flown in a manner consistent with the patriotic customs set forth in 4 U.S.C. Sections 5-10, as amended, governing the display and use of the flag of the United States; and
- (b) *political signs* that attempt to influence the outcome of an election, including supporting or opposing an issue on the election ballot, may be displayed exclusively on property owned by the *member*, subject to *regulations* of the *Board*, governing times of display and the size and number of such signs.

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**6.8 Maintenance of Lots, Landscaping, and Gardening.** Each *owner* shall maintain his *lot(s)* and all improvements thereon. All landscaping and natural vegetation are to be kept in a presentable manner. Small, non-commercial gardening is permitted. All of these responsibilities and uses are to be performed with due regard to adjoining *owners*. No clear-cutting of timber shall be permitted except such as is necessary for placement of and access to a home. Select cutting for views is acceptable.

**6.9 Burning.** No open fires shall be permitted without a burning permit from the appropriate governmental agency. Such burning must comply with applicable regulations.

**6.10 Trash.** Garbage and trash must be disposed of, covered and kept out of sight, and may not be thrown into any drainage area.

**6.11 Firearms, Fireworks.** No firearms or fireworks may be discharged or ignited on any part of the *properties*.

**6.12 Game Refuge.** No bird or animal, domestic or wild of any size may be hunted, captured, killed or injured on any part of the *properties*, except as may be authorized and regulated from time to time by the Board of Directors and appropriate governmental bodies, to control overpopulation of animals on the mountain

**6.13 Street Lights or Security Lights.** Automatic security lighting such as that provided by power companies is prohibited. Low voltage path/patio hooded lighting is permissible provided that such lighting is shielded or directed in such a way that the direct light is not visible from neighboring *lots*, roadways or other common areas. The *Association* has the right, without trespass, to remove such lights if installed.

## **ARTICLE 7 ENFORCEMENT**

**7.1 Sanctions.** The *Board* may impose sanctions as set forth in this Article, against an *owner* and/or against an occupant, guest or invitee of the *owner*, for violation of the *Governing Documents*, in accordance with procedures set forth in this Article and in *Association rules* and *regulations*. Such sanctions may include, but are not limited to, any or all of the following:

- (a) The *Board* may impose reasonable monetary fines which shall constitute a lien upon the *lot* of the *owner*;
- (b) The *Board* may suspend an *owner's* right to vote;
- (c) The *Board* may suspend any *persons* right to use any recreational facilities within the *common area*;

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- (d) The *Board* may suspend any services provided by the *Association* to an *owner* or the *owner's lot*;
- (e) The *Board* may levy individual *lot* assessments as more fully set out in Article 4 of this *Declaration* and in Articles 2 and 7 of the Bylaws.

**7.2 Suits at Law or in Equity.** The *Board* may also elect to enforce the provisions of the *governing documents* by filing suits at law to recover monetary damages, or in equity to enjoin any violation, or both.

**7.3 Self Help.** The *Board* may elect to enforce provisions of the *governing documents* by self-help when applicable, including but not limited to towing unauthorized vehicles or vehicles that are in violation of parking *rules*, and removing unauthorized animals or authorized animals that have become dangerous or a nuisance and which the *owner* has refused to remove, or to removing unauthorized lights. Entry onto a *lot* pursuant to this section shall not be deemed a trespass.

**7.4 Cost of Enforcement.** In any action to enforce provisions of the Governing Documents, if the *Association* prevails it shall be entitled to recover all costs, including, without limitation, *reasonable attorney's fees* and court costs, incurred in such action. The offending *owner* shall reimburse any and all costs of the *Association*, including *reasonable attorneys fees* actually incurred, to the *Association*. Such costs shall be a personal obligation of the *owner* and becomes a charge against the *lot* of the *owner* and shall be collectable as an Individual *Lot* Assessment in accordance with Article 4 of this *Declaration*.

**7.5 Board Enforcement Discretion.** The *Association* shall not be obligated to take action to enforce any provision of the *governing documents* when the *Board*, in the exercise of its business judgment, determines it is likely to be construed as inconsistent with applicable law or in any case in which the *Board* reasonably determines that the proof supporting the *Association's* position is not strong enough to justify taking enforcement action. Any such determination shall not be construed to be a waiver of the right of the *Association* to enforce such provision under any circumstances or to estop the *Association* from enforcing any other provision of the *governing documents*.

**7.6 Responsibility for Others.** *Owners* are obligated to assume the responsibility that any and all dependents, guests, workers, tenants and contractors working for the *lot owner*, observe and maintain all the *rules, regulations*, covenants and restrictions binding the *lot owners* themselves.

**7.7 Procedures for Fines and Suspensions.** A fine or suspension of privileges might be imposed for a violation, only after a hearing held before the *Board* or an adjudicator panel appointed by the *Board* to determine if any *lot owner* should be fined or if Gateway Mountain Subdivision privileges or services should be suspended pursuant to the powers granted to the *Association* and more specifically set forth in Article 2 of the Bylaws. Any panel appointed by the *Board* shall be composed of *members* of the *Association* who are not officers of the *Association* and not members of the *Board*. The *lot owner*

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charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision, as more fully set forth in *Association Rules* of Procedure for Hearings. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation continues to occur. Such fines shall be assessments secured by liens as provided in Article 4 of this *Declaration*. If it is decided that a suspension of Gateway Mountain Subdivision privileges or services should be imposed, the suspensions may be continued without further hearing until the violation or delinquency is cured. The *lot owner* may appeal the decision of a panel of adjudicators to the full *Board* by delivering written notice of appeal to the *Board* within 15 days after the date of the decision. The *Board* may affirm, vacate, or modify the prior decision of the panel.

**7.8 Fine of a Non Owner Occupant.** When a fine is assessed for a violation by an occupant other than the *owner*, or a guest or invitee of such occupant, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the *Board*, the *owner* shall pay the fine upon notice from the *Board*.

**7.9 Legal Rights under General Law.** Nothing in this *Declaration* shall be construed to limit any legal right of an aggrieved party (whether a *member* or the *Association*) or to limit any protections of an alleged violator as are available either in a court of law or a court of equity.

**7.10 Enforcement by Others.** The *Association*, any *owner*, or the *Declarant* shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this *Declaration*. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE 8

**PROPERTY SUBJECT TO DECLARATION; ADDITIONS THERETO**

**8.1 Additions to Existing Property.** Additional *properties* may become subject to this *Declaration* in either of the following manners:

- (a) By the *Declarant*. By vote of the *Property Owners Association*, authority has been given to include within the subdivision those *properties* described in Deed Book 164 at Page 329 Deed Book 444 at Page 595, Deed Book 447 at Page 778, and Deed Book 486 at Page 621, McDowell County Registry and Deed Book 409, at Page 267, Rutherford County Registry. The *Declarant*, his successors or assigns, shall have the right without the consent of the *Association* or of the *owners* of other *lots*, but shall not be obligated to bring within the scheme of this

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**Declaration**, any *properties* contained within the aforesaid deeds. **Declarant** may also at any time convey to the **Property Owners Association** additional *properties* to be used as roadways or *common areas*.

Any addition authorized under this subsection shall be made by the filing of record in the Office of Register of Deeds for McDowell County, Buncombe County or Rutherford County North Carolina, a plat showing such additional property which by reference thereon subjects such *properties* to this **Declaration**. No amendment to these covenants and restrictions shall be necessary. Until such plats have been filed, the portion of the real estate contained within the referenced deeds shall not be subject to these covenants and restrictions.

- (b) By majority vote of the **Property Owners Association** at any regular or special meeting.

**ARTICLE 9**  
**RIGHTS-OF-WAY, EASEMENTS AND RESERVATION**

**9.1 Roadways.** All roadways as indicated on the recorded plat throughout the *properties* have a right-of-way of sixty (60) feet in width lying thirty (30) feet on each side of the center line of the roads. **Declarant** hereby reserves for himself, his heirs and assigns, from each conveyance of a *lot*, this sixty (60) foot right-of-way which may be deeded to the **Association** subject to the **Declarant's** reservations.

Due to the nature of landscape and accompanying geological formations, it is possible that some roadways will not be able to be constructed within the sixty (60) foot rights-of-way as shown on the recorded plat. Therefore, **Declarant** reserves unto himself, his heirs and assigns, the right to shift said sixty (60) foot right-of-way as required by terrain and rock formation, staying as close to the sixty (60) foot right-of-way as shown on the recorded plat, as possible. Should said rights of way be varied, there is hereby reserved unto all property *owners* a right-of-way across any property, twenty (20) feet in width, from their *properties* to the shifted road right-of-way, said twenty (20) foot driveway to be located as the terrain and rock formations dictate.

**9.2 Utility Easements.** **Declarant** hereby reserves the right to grant to any public utility company, municipality or other governmental unit, water or sewer company an easement for a right-of-way located along the front *lot* line and along all other *lot* lines, for the right to erect and lay, or cause to be erected or laid, maintained, removed or repaired, all electric, telephone and telegraph wires, water and gas pipes and conduits, catch basins, surface drains, sewage lines, and other customary or usual appurtenances and may from time to time, in the opinion of the **Declarant**, his heirs and assigns, or any utility company or governmental authority, be deemed necessary for maintenance and repair of said utilities. Any right of recourse arising from temporary inconvenience or property damage within the right-of-way against the **Declarant** or the utility company is hereby

waived by acceptance of the deed of conveyance. The *Declarant* reserves the right to subject the *properties* to a contract with Duke Power Company, Carolina Power and Light Company or such other utility company which will service the *properties* for the installation of aboveground or underground electric cables and/or the installation of roadway lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Duke Power Company, Carolina Power and Light Company or such other utility company that services the *properties* by each *member* .

**ARTICLE 10**  
**CONVEYANCE OF COMMON AREAS AND ROADWAYS TO THE**  
**ASSOCIATION**

**10.1 Conveyance of Roadways and Common Areas.** In addition to the roadways and *common areas* owned by the *Association* in the year 1998, the *Declarant* may and shall convey to the *Property Owners Association* new sections of roadways and/or new *common areas* which have been constructed or dedicated by the *Declarant* for the common use of all *members* as roadways or *common area*. *Declarant* shall not be required to construct additional roadways or dedicate additional *common areas*. Any roadways constructed by *Declarant* which are accessed over subdivision roadways shall, however, be conveyed over to the *Association*, subject to the reservations hereinafter set forth according to the following terms:

- (a) No roadway shall be conveyed over to the *Association* without the consent and agreement of a majority of the Roadway Committee, or if no such committee is in existence, by the majority vote of the *Board*. The Roadway Committee or *Board* shall accept such roadways whenever any such new section of roadway is constructed in a manner consistent with other roadways within the subdivision and is suitable for maintenance in accordance therewith.
- (b) Additional *common areas* may be conveyed by the *Declarant* to the *Association* at any time, in the sole discretion of the *Declarant*, provided however, that no such conveyance of *common area* which requires regular maintenance shall be made without consent of a majority of the *Board* of Directors.
- (c) The *Declarant* and the Roadway Committee or the *Board* shall meet and agree upon a reasonably objective standard for the construction of subdivision roadways which standard shall be adhered to by both in the construction, conveyance, and acceptance of subdivision roadways and shall be in accordance with the construction standards existing within Gateway Mountain Subdivision as a whole.

**10.2 Rights-of-way and Easements Retained.** The conveyance by the *Declarant* to the *Property Owners Association* of the *common area* and roadways is subject to a reservation for the benefit of any *properties* adjacent to the *Gateway property* which

may hereafter be brought under these covenants and restrictions by *Declarant*, his heirs or assigns, of the following:

- (a) Rights-of-way for ingress, egress, and regress over and upon those certain roads providing access to and located on the recorded plats of Gateway Mountain, as the same provides access, it being understood and agreed that, so long as said roadways remain private, there is an obligation of joint maintenance of said roadways or driveways as the same are used by *owners* of *lots* located within adjacent *properties* brought under these covenants and restrictions by *Declarant*.
- (b) Easements and rights-of-way for the purpose of connecting water, sewer, electric, telephone and other utility lines running across the property of Gateway Mountain as shown on said recorded plats for the benefit of *properties* brought under these covenants and restrictions by *Declarant*.

**10.3 Encumbrances.** The *Declarant* agrees that, in connection with the conveyance of *common area* as above referred to, such conveyances to the *Property Owners Association* shall be free and clear of all liens and financial encumbrances, except easements and right-of-way of record or as set out herein, McDowell County ad valorem taxes, and such recorded Deeds of Trust as may exist covering such *common areas*.

**10.4 Easement for Construction Purposes.** The *Declarant* shall have full rights of ingress and egress to and through, over and about the *common area* and roadways of the *properties* during such period of time as the *Declarant* is engaged in any construction or improvement work on or within the property and shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc., which are being utilized in said construction. No *owner*, his guests or invitees, shall in any way interfere or hamper *Declarant*, his employees, heirs or assigns, in connection with such construction, it being understood and agreed that the construction activities of *Declarant* or his contractors or subcontractors shall, so far as practicable, not interfere with the quiet enjoyment of the *properties* of the *owners* and said *properties*.

**10.5 Conveyance of Additional Common Areas or Roadways.** Upon the conveyance to the *Association* of any additional *common areas* or roadways, the maintenance of said *properties*, along with the right to collect assessments against *lots* thereby accessed, shall inure to the sole and exclusive benefit of the *Association*. Said additional property shall be treated in the same manner as the *common areas* or roadways discussed herein, subject to the same burdens and conveying the same privileges to all *members*. Any conveyance of additional *common areas* shall particularly describe said areas by metes and bounds or reference to recorded plat.

**ARTICLE 11**  
**GENERAL PROVISIONS**

**11.1 Duration.** The covenants and restrictions contained in this *Declaration* shall run with and bind the *properties* which are made subject hereto for a period of twenty (20) years from the date this *Declaration* is recorded in the office of the Register of Deeds for McDowell County, Buncombe County and Rutherford County North Carolina, after which time, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each.

**11.2 Amendment of Declaration.**

- (a) Except in cases of amendments that may be executed by the *Declarant* under the terms of this *Declaration* or by certain *lot owners* under Section 11.3 hereof, this *Declaration* may be amended only by affirmative vote or written agreement signed by *owners* of *lots* to which at least sixty-seven percent (67%) of the votes in the *Association* are allocated or by the *Declarant* if necessary for the exercise of any *development right*.
- (b) No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.
- (c) Every amendment to this *Declaration* shall be recorded in every county in which any portion of the Gateway Mountain Subdivision is located and is effective only upon recordation. An amendment shall be indexed in the Grantee index in the name of the Gateway Mountain Subdivision and the *Association* and in the Grantor index in the name of each *person* executing the amendment.
- (d) Amendments to this *Declaration* required to be recorded by the *Association* shall be prepared, executed, recorded and certified as required by North Carolina law.

**11.3 Termination of the Association as a Planned Community.** Except in the case of taking of all the *lots* by eminent domain, this *Association* may be terminated only by agreement of *owners* of *lots* to which at least eighty percent (80%) of the votes in the *Association* are allocated. Execution of a termination agreement must be done as provided in section 47F-2-118 (b) through (i) of the Planned Community Act as amended, which section is incorporated into this section by reference as if it were stated in detail herein.

**11.4 Eminent Domain.**

- (a) If a *lot* is acquired by eminent domain, or if part of a *lot* is acquired by eminent domain leaving the *lot owner* with a remnant which may not practically or lawfully be used for any purpose permitted by this *Declaration*, the award shall compensate the *lot owner* for his *lot* and its interest in the *common elements*. In such case the *lots allocated interest* shall be reallocated as provided in Section 47F-1-107 which is herein incorporated by reference as if fully set out in detail in this Article.



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- (b) If part of the *common elements* is acquired by eminent domain, the portion of the award attributable to the *common elements* taken shall be paid to the *Association*. Any portion of the award attributable to the acquisition of a *limited common element* shall be apportioned among the *owners* of the *lots* to which that *limited common element* was allocated at the time of acquisition based on their *allocated interest* in the *common elements* before the taking.

**11.5 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions of this *Declaration*, which shall remain in full force and effect.

**11.6 Management.** The *Declarant* reserves the right to enter into a contract with a management firm, which said contract shall provide for payments to said firm for services rendered on behalf of the *Association* in connection with maintenance and control of the *common areas* and all other duties delegated herein to the *Association*. The contract shall have the terms not to exceed one (1) year and shall be cancelable by the *Property Owners Association* upon the giving to said management firm of ninety (90) days written notice prior to such cancellation. No such contract shall give or convey the right of such management firm to increase the amount of dues collectable hereunder or to make any special assessments, without the consent of the *members* as specified herein.

**11.7 Construction.** This *Declaration* shall be construed and controlled by and under the laws of the State of North Carolina. If any term of this *Declaration* or of the Bylaws of the *Association* is in conflict with an applicable provision of the General Statutes of North Carolina, the applicable provision of that law shall govern.

**11.8 Bylaws.** The *Association* shall develop and adopt Bylaws as well as *rules* and *regulations* necessary to implement the responsibilities of the *Association* as set out herein. If any term of the Bylaws is in conflict with any term of this *Declaration* the term of this *Declaration* shall govern unless such *Declaration* provision is inconsistent with North Carolina Law.

**11.9 Merger and Subdivision of Lots.** Upon application in writing by an *owner*, the *Board* may authorize the merger of adjoining *lots* or the subdivision of a *lot*, subject to the consent of such Mortgagee(s) as may have an interest in the affected *lot(s)* and as provided in this Section;

- (a) The *Board* may authorize subdividing a *lot* only if such *lot* contains a total area of four acres or more and each resulting *lot* will contain at least two (2) acres, each of which shall have frontage on an existing subdivision roadway sufficient for a 20 foot driveway and each of which shall have a home site upon which a residence can be constructed in conformity with all restrictions or conditions of law or of this *Declaration*, including provisions which may further regulate merger or subdivision and use provisions regulating use of *lots*. Such plats and plans as may be necessary to show the merged or subdivided *lots* shall be thereafter prepared at the expense of the requesting *owner*, who shall additionally be responsible for all costs, including legal fees, associated with the merger or

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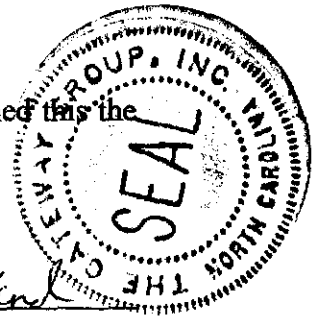
subdivision of such *lots*. The *Board* may impose conditions for use of the merged or subdivided *lot* as a condition precedent to granting approval for such a merger or subdivision. From and after the time a merger or subdivision of *lots* is approved, such resulting *lots* shall, for all purposes, be considered *lots* in accordance with their new boundaries.

- (b) There is reserved on behalf of the *Declarant*, his heirs and assigns, the absolute right to subdivide or re-subdivide any *lot* or *lots*, whether or not previously platted, into smaller *lots*, or *lots* with different boundaries from the original. No such re-subdivisions by the *Declarant* shall materially impair or impede any other *lot owner's* access.
- (c) Except as provided in (a) and (b) of this Section no *lot* shall be further subdivided or separated into smaller *lots* by an *owner* and no portion less than all of any such *lot* shall be conveyed or transferred by an *owner*, except as herein authorized or as may be required due to the exercise of the power of eminent domain by a governmental body.

IN WITNESS WHEREOF, the Declarant has caused these presents to be signed this the 3RD day of NOVEMBER, 2006.

DECLARANT: THE GATEWAY GROUP  
By: George Holland (SEAL), President

ATTEST BY:  
James G. Hillard, Secretary

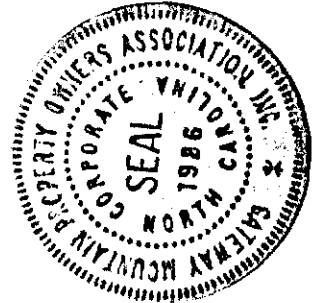


The undersigned President and Secretary of the Association certify that this amendment was affirmed by a total of 450 votes of a possible 658. A record of this vote is maintained in the official records of the Association

GATEWAY MOUNTAIN PROPERTY OWNERS ASSOCIATION, INC.

By: Danny J. Kepko (SEAL), President

ATTEST BY:  
Olivera Hillard, Secretary



STATE OF NORTH CAROLINA

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COUNTY OF MCDOWELL

I, DARLENE B. NOLEN, A Notary Public of MCDOWELL County, North Carolina, certify that GEORGE HOLLAND personally came before this day and acknowledged that he/she is President of The Gateway Group, Inc., and that he/she, as President, being authorized to do so, executed the foregoing on behalf of the corporaiton.



Witness my hand and official seal, this the 3RD day of NOVEMBER, 2006.

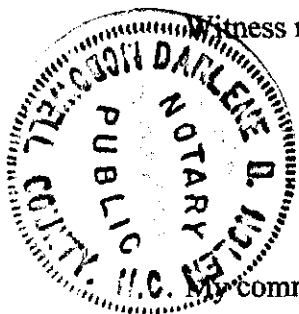
Darlene B. Nolen  
Notary Public  
DARLENE B. NOLEN  
(Notary's Printed Name)

My commission expires: 9/25/2010

STATE OF NORTH CAROLINA

COUNTY OF MCDOWELL

I, DARLENE B. NOLEN, A Notary Public of MCDOWELL County, North Carolina, certify that Garry Kepley personally came before this day and acknowledged that he is President of Gateway Mountain Property Owners Association, Inc., and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporaiton.



Witness my hand and official seal, this the 3RD day of NOVEMBER, 2006.

Darlene B. Nolen  
Notary Public  
DARLENE B. NOLEN  
(Notary's Printed Name)

My commission expires: 9/25/2010

EXHIBIT A                      CRP 893    244

Situate lying and being in McDowell, Rutherford and Buncombe Counties, North Carolina, and being all those certain *properties* shown on the following listed plats:

- McDowell County Plat Book 4 at Page 136
- McDowell County Plat Book 4 at Page 137
- McDowell County Plat Book 4 at Page 138
- McDowell County Plat Book 4 at Page 163
- McDowell County Plat Book 4 at Page 164
- McDowell County Plat Book 4 at Page 410
- McDowell County Plat Book 4 at Page 418
- McDowell County Plat Book 4 at Page 420
- McDowell County Plat Book 4 at Page 427
- McDowell County Plat Book 5 at Page 21
- McDowell County Plat Book 5 at Page 40
- McDowell County Plat Book 5 at Page 58
- McDowell County Plat Book 5 at Page 65
- McDowell County Plat Book 5A at Page 13
- Buncombe County Plat Book 50 at Page 79

By recordation of additional plats making specific reference to these covenants and restrictions under Gateway Mountain Subdivision and the Gateway Group, Inc., additional *properties* may be included herein without amendments to this *Declaration*, so long as such additional *properties* are included within any of the following deeds:

- McDowell County Deed Book 164 at Page 329
- McDowell County Deed Book 444 at Page 595
- McDowell County Deed Book 447 at Page 778
- McDowell County Deed Book 486 at Page 621
- Rutherford County Deed Book 409 at Page 267

Patricia A. Reel  
Register of Deeds

# Mcdowell County Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752  
Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail preelmcdowell@titlesearcher.com



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Filed For Registration: 11/07/2006 03:11:41 PM

Book: CRP 893 Page: 217-244

Document No.: 2006008492

RESTRICTIVE COVENANTS 28 PGS 95.00

Recorder: LENA BAKER

\*\*\*\*\*

State of North Carolina, County of McDowell

Filed for registration and Duly Recorded this 07TH day of NOVEMBER 2006.

PATRICIA A. REEL, REGISTER OF DEEDS

*Lena Baker*

By: \_\_\_\_\_  
DEPUTY REGISTER OF DEEDS

\*\*\*\*\*

**DO NOT REMOVE!**

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.