

GEORGIA UNION COUNTY
CLERK'S OFFICE SUPERIOR COURT
FILED FOR RECORD AT 9:00 A M
FEBRUARY 22, 2005, RECORDED
IN BOOK 567 PAGE 127-132


Clerk

Return recorded document to:
Cary D. Cox, P.C.
P.O. Box 748
Blairsville, GA 30512

TOCCOA RIVER HIGHLANDS

STATE OF GEORGIA
COUNTY OF UNION

DECLARATION OF RESTRICTIONS, LIMITATIONS AND COVENANTS
RUNNING WITH THE LAND

Whereas, the holders of the legal title to the below listed subdivision, know as Toccoa River Highlands, said tract being more particularly described as follows:

All that tract or parcel of land lying and being in Land Lots 323 & 324, 10th District, 1st Section and Land Lots 3 & 4, 11th District, 1st Section of Union County, Georgia, containing 35.478 acres, as shown on a plat of survey by Rochester & Associates, Inc., RS #2653, dated 7/25/01, revised 1/26/05, and recorded in Plat Book 55, Page 173, Union County records which description is incorporated herein by reference and made a part hereof.

The purpose of the following restrictions and covenants is to ensure the use of said realty by the owners, to prevent the impairment of the attractiveness of said realty, and to maintain the desired character of the community, and thereby to secure to each present or future owner the full benefit and enjoyment of their property. The reservations and restrictive covenants are to run with the land and shall be binding upon all parties and persons owning lots in Toccoa River Highlands Subdivision.

If the owners of such lots or any of their heirs, successors or assigns, shall violate and of the covenants hereinafter set out, it shall be lawful for any other person owning real property situated in said subdivision to prosecute any proceeding at law or in equity against the person or persons violating any of such covenants and either to prevent him from doing so or to recover damages for such violations, or both.

Each covenant contained herein is severable and distinct from each other and in its application to all

or any portion of the premises, and the invalidity or unenforceability of any covenant contained herein as to any portion of the premises shall not affect the validity or enforceability of any of the other covenants contained herein. Invalidation of any one of these covenants by judgement or court shall in no wise affect any of the other provisions, which shall remain in full force and effect.

These covenants and any amendments thereto, shall apply to and govern the realty and its present or future parcels, common roads and common area and the use thereof. All covenants herein stated and any amendments or additions thereto, shall run with and shall be binding upon all persons or entities claiming under them.

Toccoa River Highlands is designed as a gated, private community. The roads will be private and owned by the Homeowners Association. The Association, active under and pursuant to its by-laws, shall be solely and exclusively responsible for the maintenance of roads and common areas of the subdivision. The Homeowners Association shall assume responsibility for all roads and common areas once eighty percent (80%) of the lots have been sold. There will be a two hundred dollar (\$200) Homeowners Association fee collected each time a lot is sold within the subdivision. This fee will be held in escrow until the Homeowners Association is formed, at which time the money will be applied toward the creation and establishment of the Homeowners Association and shall be used pursuant to the by-laws of the Association. Once established, the Association will receive the two hundred dollar (\$200) Association fee, as part of the disbursements from each sale/resale of the properties within the subdivision. The Homeowners Association will establish, as part of their by-laws, the annual dues each homeowner will be assessed for road and common area maintenance.

The Developer shall maintain all roads and common areas until eighty percent (80%) of the lots in Toccoa River Highlands have been sold. When eighty percent (80%) of the lots have been sold the Developer will pave the roads and the owners of lots in the subdivision shall form a Homeowners Association, which will assume all responsibility for all further maintenance of the roads and common areas.

The initial homeowner will pay a one-time tap fee of one thousand two hundred fifty dollars (\$1,250.00) and a monthly service fee to Appalachian Water, Inc., to connect to their water system. These fees are not associated with closing fees and are part of the service agreement between the buyer and Appalachian Water, Inc. Subsequent owners will not be required to pay a tap fee, however they are subject to monthly service fees.

Developers shall not be responsible for the security provided by the entrance gate. Owners, their successors and assigns, by purchasing property subject to this declaration agree to hold harmless and indemnify the developers, their heirs and assigns, from liability for operation and/or security provided by the entrance gate. The developers make no representation as to the protection and/or operation of the entrance gate and the protection provided therefrom.

1. **LAND USE.** No lot after being conveyed by the developer may be subdivided into lots less than one (1) acre. All lots are for single family residential purposes only. Only such residence shall be erected on any one lot, provided however that the owner of any lot may erect a garage for use in connection with such a residence. No lot dwelling or structure shall be used for commercial activity or business with the exception of a private home office. Renting of house shall not be deemed commercial activity.

2. **SETBACKS.** All setbacks are shown on recorded plat of Toccoa River Highlands Subdivision and are to be constructed to be a part of the Restrictions and Covenants, said plat and setbacks are incorporated herein by reference as if fully set forth.
 3. **CONSTRUCTION.** When house construction begins, work must be pursued diligently and exterior must be completed within nine (9) months from start thereof. All homeowners shall be held responsible for the acts of their employees, sub-contractors, suppliers and other persons or parties involved in construction or alteration of a homesite. In this regard, a homeowner shall be responsible for any damage to roads and other common property. Builder/owner must ensure that the construction site is kept clean and free of debris and waste materials, and that stockpiles or unused materials are kept in neat and orderly fashion. To prevent mud and other debris from being tracked onto a street, a construction drive must be installed prior to beginning construction on the foundation and properly maintained.
 4. **HOUSE SIZE.** All houses shall be constructed with no less than twelve hundred (1200) square feet of heated living space, if more than two (2) floors eight hundred ninety-six (896) square feet on main floor, exclusive of any carport, garage, basement, deck, patio or porches. The basement and first floor levels will have, as a minimum of 10 foot wide decks with railings.
 5. **BUILDING MATERIALS.** Primary residential building material for home construction shall be stone, log or exterior wood material unless approved by the developer in writing. No concrete block construction (with the exception of foundations), metal buildings, mobile homes, double wide mobile homes, manufactured homes, or relocated homes will be allowed. Exposed concrete rock or poured concrete foundations and site retaining walls must be covered with stone or siding. Stucco may be used if not visible from subdivision road to cover foundation and retaining walls. All colors for siding, trim roofing, etc, must be confined to earth tone colors which are compatible with the natural environment. No bright colors such as, but no limited to, white, blue, yellow, etc may be used. When a natural appearance in desired all exterior siding and trim must be covered with waterproofing sealant.
 6. **ROOFING AND SIDING.** Primary roofing materials must be cedar shakes, architectural shingles or factory painted metal in colors and texture which complement the balance of the other colors and materials used. All primary roofs shall be a minimum of 7-12 pitch with porches a minimum of 4-12.
 7. **DRAINAGE.** 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 Developer 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 homesite 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. All driveways must be asphalt, concrete, or adequately graveled and completed within one (1) year from the starting date of home construction. Driveways will provide level parking
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and turnaround space for at least two (2) automobiles at the main level of the house.

8. VISUAL EFFECTS. Only wood fences will be allowed in front and side of residence. In the rear, only wood or chain link fences will be allowed. No farm type wire fences will be allowed. Compressors for central air conditioning units and play equipment must be located where it will have minimum visual impact on adjacent properties.

9. UTILITIES. All electrical and other utility lines shall be placed underground and all water supply and sewage facilities shall comply with the applicable governmental codes. Appalachian Water, Inc., will provide and maintain the water system for the subdivision. Each Homeowner will sign an agreement with Appalachian Water, Inc, defining their cost and services that Appalachian Water, Inc., will provide. ~~There shall be one thousand dollars (\$1000.00) connection fee charged per lot and a monthly water fee of thirty dollars (\$30.00) based on service provided.~~ No satellite dishes over a thirty-six (36) inch diameter will be allowed on any lot and must be placed out of sight of subdivision roads.

See FACILITY
PART 14.11
Delete AD

RJ
CORRECT AD
COPY
RECORDED.

10. TREES AND SHRUBS. No more than fifty percent (50%) of existing trees over five (5) inches in diameter shall be removed from the property after being conveyed by the developer. Any homesite, which has been altered from its natural state, shall be landscaped. All shrubs, trees, grass and plantings or every kind shall be kept maintained, properly cultivated and free of trash and other unsightly material. Landscaping shall be completed no later than thirty (30) days following completion of any building with weather permitting. Completed landscaping means all areas are covered with natural growth, grass, sod, shrubs, trees, and/or mulch. No bare dirt shall be left exposed except during construction.

11. EASEMENTS. Developer, for the benefit of developer and developer's successors and assign, reserve 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 subject realty and its parcels, 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 developer to grant and convey reasonably necessary and appropriate licenses, permits and easements to other third persons or entities in order to accomplish the intents and purposes of this provision. Nothing herein shall obligate developer to provide or furnish any utility service.

12. VEHICLES. No motorcycles or other vehicles with external engines shall be permitted to ride along the streets of said subdivision except for the entry and exit from the area; if they are determined to be a nuisance to other property owners. All such vehicles shall be properly muffled so as not to disturb the neighborhood. The parking of buses or trucks, rated higher than one ton, shall not be permitted. No motor homes or RV units shall be parked temporarily or permanently on any subdivision road. A recreational vehicle or motor home may be used for a period not to exceed two (2) weeks of any given year, if parked at least one hundred (100) feet from all subdivision roads except during construction of a residence. A recreational vehicle may be parked at a residence provided its location is at least one hundred (100) feet from all subdivision roads and shall not be for occupancy or use.

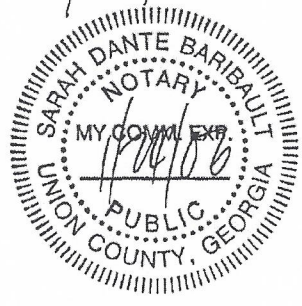
13. APPEARANCE. No lot shall be used in whole or in part for any illegal activity nor for the storage of any property or thing that will cause any lot to appear in any unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance be kept upon any lot that will emit foul or noxious odors. No lot owner or lot occupant shall conduct any activity that will disturb the peace, comfort or serenity of the occupants of surrounding property. No wrecked or untagged motor vehicle, utility trailer, nor junk, nor household appliance shall be kept or stored in plain view of subdivision roads.
14. SIGNAGE. No signs of any type shall be displayed to public view on any portion of said property except one sign of not more than 24 inches by 24 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. Developer reserves the right to erect entrance signs.
15. ACCESS. No lot shall be accessed other than by the roads inside the subdivision without written permission from developer. No road shall be built to access any adjoining property without written permission from the Developer. Exception: The developer may access by the subdivision roads, property owned by Developer or hereafter acquired by Developer which adjoins TOCCOA RIVER HIGHLANDS Subdivision if the Developer owns the property being crossed to access adjoining property.
16. ANIMALS. No animals, birds, or fowls shall be kept or maintained on any part of the property except ordinary household pets (e.g. 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.
17. LOT UPKEEP. All lots, whether vacant or occupied, shall be maintained in a neat and attractive condition.
18. RESTRICTIONS TIME PERIOD. The covenants, restrictions, easements, reservations, terms and conditions contained in this declaration, shall run with the land and shall be binding upon all lot owners and all persons claiming under them for a period of twenty (20) years from the date hereof, provided, however, that the developer retains the absolute right to amend this declaration, as it may deem necessary, during a period of two (2) years from the date of the recording hereof upon the records of the Clerk of Union County Superior Court, and all such amendments shall be binding upon all lot owners. Provided further, these covenants may be amended at any time by the written agreement of the owners of at least seventy-five (75%) percent of the total number of lots. All such amendment(s) shall apply equally to all lots within the subdivision and no such amendment(s) shall place any further obligation(s) upon developer without his written consent. Exception: The Developer reserves the right to change these covenants and restrictions at any time deemed necessary until at least seventy-five (75%) percent of the total number of lots have been sold.

In witness whereof, the owners hereby set its hand and affixes its seal, this, the 18 day
of February, 2005.

BD&E LAND COMPANY, LLC
By: [Signature]

[Signature]
Witness

[Signature]
Notary Public
My Commission Expires: 1/24/13



Return to: Cary D. Cox, P.C.
P.O. Box 748
Blairsville, GA 30514

STATE OF GEORGIA
COUNTY OF UNION

RE: *Toccoa River Highlands Subdivision
Restrictions dated February 18, 2005,
Recorded in Deed Book 567, Pages 127-
132, Union County records.*

AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That the Owners of the property described below by their presence hereby make, declare and impose upon the referenced parts of the property described the following Amendment to Restrictions, by their signatures below, which shall be and constitute running with the land and shall be binding under it, and each and all subsequent purchasers, their heirs, personal representatives, successors and assigns of said property or any part, parcel or portion thereof, described as follows:

All that tract or parcel of land lying and being in Land Lots 323 & 324, 10th District, 1st Section and Land Lots 3 & 4, 11th District, 1st Section of Union County, Georgia, containing 35.478 acres, as shown on a plat of survey by Rochester & Associates, Inc., RS #2653, dated 7/25/01, revised 1/26/05, and recorded in Plat Book 55, Page 173, Union County records which description is incorporated herein by reference and made a part hereof.

The undersigned parties agree to amend the Declarations of Restrictions set forth as follows:

(1) The provisions of Paragraph Nine (9) of the Declarations of Restrictions recorded in Deed Book 567 pages 127-132, Union County records is hereby deleted in its entirety and in lieu thereof, said Paragraph Nine (9) shall read as follows:

(9) UTILITIES. All electrical and other utility lines shall be placed underground and all

UNION COUNTY, GEORGIA
FILED & RECORDED APRIL 6
2005 AT 8:00 A.M.
RECORDED IN BOOK 574 PAGE 249-250

Robert L. Garrison S.O.C.

water supply and sewage facilities shall comply with the applicable governmental codes. Appalachian Water, Inc., will provide and maintain the water system for the subdivision. Each Homeowner will sign an agreement with Appalachian Water, Inc, defining their cost and services that Appalachian Water, Inc., will provide. No satellite dishes over a thirty-six (36) inch diameter will be allowed on any lot and must be placed out of sight of subdivision roads.

Except as amended herein the provisions of the restrictions recorded in Deed Book 567, pages 127-132, Union County records are hereby incorporated by reference as if the same were set out in full.

IN WITNESS WHEREOF, the undersigned hereby sets their hands and seals this 31

day of March, 2005.

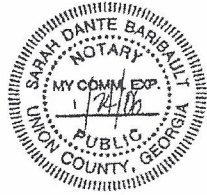
Sworn to and subscribed before me

this 31 day of March, 2005.

Lynne Stottland
Witness

Sarah Dante Barbault
Notary Public

My commission expires:



BD&E LAND COMPANY, LLC

By: [Signature]
Robert L. Garrison