

RESTATED  
BY-LAWS  
OF  
BLACKBERRY MOUNTAIN ASSOCIATION, INC.  
A Non-Profit Georgia Corporation

ARTICLE I.  
GENERAL

Section 1. The Name: The name of the Corporation is BLACKBERRY MOUNTAIN ASSOCIATION, INC.

Section 2. The principal office of the Corporation is ~~Clear Creek Road, Whitestone,~~ **25 Blackberry Mountain Drive, Ellijay,** Georgia or at such other place as may be subsequently designated by the Board of Directors.

Section 3. ~~Resident~~ **Registered** Agent: For the purpose of service of process, the Corporation shall designate a ~~Resident~~ **Registered** Agent or Agents, which designation may be changed from time to time and his or their office shall be deemed an office of the Corporation for the purpose of service of process. **Said Registered Agent shall be a resident of Gilmer County Georgia.**

ARTICLE II.  
DIRECTORS

Section 1. Number and Term: The number of Directors shall be five ~~(5)~~, **elected by the members at large. Directors must be members of the association in good standing.** ~~Four of such Directors shall be elected at large by the owners of lots within the following Colonies: Blackberry Falls, Limberlost, Limberlost Extension, Settlers Springs, and Spring Lakes. The remaining Director shall be elected by the owners of High Meadow Colony. Two (2) of the initial Directors elected by the owners of lots within Blackberry Falls, Limberlost, Limberlost Extension, Settlers Springs, and Spring Lakes shall be elected to one-year terms only. The remaining initial Directors shall be elected to two-year terms. Thereafter, All of the Directors shall serve for two-year terms or until such time as such Director has resigned or has been removed, as set forth herein. In addition to the five(5) Directors provided for herein, there shall be appointed a Director-at-Large by Blackberry Mountain Management, Inc. (the "Grantor"). The Director-at-Large shall be entitled to receive notice of all meetings of the Directors and shall only vote on matters affecting the Grantor or requiring Grantor approval under the Association Articles of Incorporation, Bylaws, Blackberry Mountain Declaration of Restrictions, Covenants and Conditions, Blackberry Mountain Rules, or as required by Georgia statute. The Director-at-Large shall not be counted for determining a quorum, and shall not be entitled to vote on routine Association business.~~ **A duly elected Director may only serve two consecutive terms and thereafter shall not be eligible to serve again until the expiration of one full two-year term. Pursuant to Article II, Section 3, any appointment to fill an unexpired term shall be counted as a full term for the purposes of the term limit. Directors in office at the time of approval of these restated by-laws shall be permitted to run for**

office for one additional term and then, after serving that additional term, shall not be eligible to serve again until the expiration of one full two-year term.

Section 2. Election of Directors: Directors, other than the initial Directors, shall be elected by the owners of each of the parcels located in the Development Area.

Section 3. Vacancy and Replacement: If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum at a special meeting of Directors duly called for this purpose, shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred, ~~excepting that a vacancy on the Board by a Director or Directors elected by the Developer shall be filled by Developer if at the time such vacancy occurs one of the contingencies referred to in the third sentence of Section 1 of this Article has not occurred.~~

Section 4. Removal: Directors may be removed for cause by an affirmative vote of a majority of the Members. ~~excepting that Directors elected by the Developer may be removed only by Developer and with or without cause, if at the time of such removal one of the contingencies referred to in the third sentence of Section 1 of this Article has not occurred.~~ No Director shall continue to serve on the Board if, during his term of office, his membership in the Association shall be terminated for any reason whatsoever. ~~excepting that Directors elected by the Developer need not be Members of the Association.~~

~~Section 5. First Board of Directors: The first Board of Directors shall consist of the persons named and designated in Article Eight of the Articles of Incorporation of this Corporation.~~

Section 6 5. Powers: The property and business of the Corporation shall be managed by the Board of Directors, who may exercise all corporate powers not specifically prohibited by statute or the Articles of Incorporation (though this designation of powers in the Board of Directors shall not prevent the said Board of Directors from delegating whatever authority and powers they may lawfully delegate to a third party manager of the Association facilities who may be employed and/or designated by the Board of Directors). The said powers shall specifically include, but not be limited to the following:

A. To make and collect assessments for the operation of the Association and the carrying out of the Association's duties in the Development Area and establish the time within which payment; of same are due;

B. To use and expend the assessments collected to maintain, care for and preserve the Association's property and the obligations of the Association in the Development Area and the operation of the Association;

C. To purchase the necessary equipment and tools required in the maintenance, care and preservation referred to above;

D. To enter upon the property of the Parcel owners when necessary to carry out its duties with respect to such Parcels;

E. To insure and keep insured the Association property in the manner set forth in the Declaration, against loss from fire and to purchase such other insurance as the Board of Directors may deem advisable;

F. To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin to seek damages from the Association members for violations of these By-Laws and the terms and conditions of the Blackberry Mountain Declaration of Restrictions, Covenants and Conditions or the Blackberry Mountain Rules;

G. To enter into such contracts with such firms, persons or corporations for the maintenance, operation and preservation of the Association property. **Such contracts shall be in writing, not extend beyond a two year term and contractor shall be licensed and insured;**

H. To enter into and execute the instruments and documents referred to and provided for in the Fifth Article of the Articles of Incorporation of this Corporation, and such other instruments and documents as the Board of Directors may deem appropriate, which will be in the best interests of the Association, for the purpose of undertaking such duties as may be allowed to be delegated by law;

I. To contract, from time to time, with a third party for the management of the Association, and to delegate to such third party, as manager, such powers and duties of this Corporation and its Officers and Directors except such powers and duties which by law or the provisions of the Articles of Incorporation of this Corporation or the By-Lays of this Corporation are required to have the specific approval of the Board of this Corporation;

J. To enter into employment agreements with auditors, attorneys and such other persons as may be necessary for the orderly operation of the Association property and to pay compensation to said parties;

K. To make reasonable rules and regulations for the operation of the Association; and

L. All other powers, including the power to acquire real property or interests in real property, which may be necessary for the efficient operation of the Association and for the use and benefit of the members of the Association.

Section 7 6. Compensation: Neither Directors nor Officers shall receive compensation for their services as such.

Section 8 7. Meetings:

A. ~~The first meeting Of the Board of Directors of the Association shall take place on the first~~

~~Monday of the month following issuance of the first certificate of occupancy for the use of the Association. Thereafter regular meetings of the Board of Directors shall take place on the first Monday of each month at 8:00 o'clock P.M. or such other time and day as shall be established by the President or by resolution of the Board of Directors.~~ **The Board of Directors shall hold quarterly meetings on the third Saturday at 9:30 o'clock A.M. of the months January, April, July and October or on the third Friday of the same months at 8:00 o'clock P.M. All meetings of the Board shall be open to the Membership. The Secretary shall give notice of each meeting either personally, by mail or telegram, at least ten days before the date of such meeting. Notice of meetings shall be provided to the membership at the same time and posted in the office, postal box area and on the website.**

B. Special meetings shall be held whenever called by the President or a majority of the Board. The Secretary shall give notice of each special meeting either personally, by mail or telegram, at least ~~three (3)~~ **ten** days before the date of such meeting, but the Directors may waive notice of the calling of the meeting. **Notice of called meetings shall be provided to the membership at the same time and posted in the office, postal box area and on the website.**

C. A majority of the Board shall be necessary and sufficient at all meetings to constitute a quorum for the transaction of business, and the act of a majority present at any meeting at which there is a quorum shall be the act of the Board. ~~If a quorum shall not be present at the meeting, the Directors then present may adjourn the meeting without notice other than announcement at the meeting until a quorum shall be present.~~

Section 9 8. Order of Business: The order of business at all meetings of the Board shall be as follows:

- A. Roll Call;
- B. Reading of Minutes of last meeting;
- C. Consideration of communications;
- D. Resignations and elections;
- E. Reports of Officers and employees;
- F. Reports of committees;
- G. Unfinished business;
- H. Original resolutions and new business;
- I. Adjournment.

Section ~~10~~ 9. Financial Statement: The Board or the party employed for the management of the Association shall present, no less often than at the Annual Meeting, a full and complete statement of the business and condition of the Corporation, including a report of the operation expenses of the Corporation and the assessments paid by each Member.

ARTICLE III.  
OFFICERS

Section 1. Executive Officers: The executive Officers of the Corporation shall be a President, Vice President, Secretary and Treasurer, all of whom shall be elected annually by the Board. Any two of said offices may be united in one person, except that the President shall not also be the Secretary or an Assistant Secretary of the Association. The President shall be a Director. ~~The other executive and subordinate Officers of the Corporation shall be members of the Association.~~

Section 2. Subordinate Officers: The Board of Directors may appoint such other Officers and agents as they may deem necessary, who shall hold office at the pleasure of the Board of Directors, and have such authority and perform such duties as from time to time may be prescribed by the Board.

Section 3. Tenure of Officers, Removal: All Officers and agents shall be subject to removal, with or without cause, at any time by a majority vote of the entire Board of Directors. The Board may delegate powers of removal of subordinate Officers and agents to any officer.

Section 4. The President:

A. The President shall preside at all meetings of the Members and Directors; he shall see that all orders and resolutions of the Board and orders of the party employed for the management of the Association are carried into effect; he shall execute bonds, mortgages and ether instruments requiring a seal, under the seal of the Corporation; the seal, when affixed, shall be attested by the signature of the Secretary;

B. He shall have general superintendence and direction of all the other Officers of the Corporation and shall see that their duties are performed properly;

C. He shall cause a report of the operations of the Association for each fiscal year to be submitted to the Directors whenever called for by them, and to the Members at the Annual Meeting, and from time to time shall report to the Board all matters within his knowledge which the interests of the Corporation may require to be brought to their notice; and

D. He shall be an ex-officio member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the President of a corporation.

Section 5. The Vice President: The Vice President shall be vested with all the powers, and required to perform all the duties, of the President in his absence, and such other duties as may be

prescribed by the Board of Directors.

Section 6. The Secretary:

A. The Secretary shall keep or cause to be kept the minutes of the Members' and of the Board of Directors' meetings in one or more books provided for that purpose. **Draft copies of minutes shall be provided to the membership within two business days following any meeting;**

B. He shall see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law;

C. He shall be custodian of the corporate records and of the seal of the Corporation and shall see that the seal of the Corporation is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these By-Laws;

D. He shall keep a register of the post office address of each Member, which will be furnished to the Secretary by such Member; and

E. In general, he shall perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. The Treasurer:

A. The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation, in such depositories as may be designated by the Board of Directors;

B. He shall disburse or cause to be disbursed the funds of the Corporation as ordered by the Board or the party employed for the management of the Association taking proper vouchers for such disbursements, and shall render or cause to be rendered to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of the financial condition of the Corporation;

C. He may be required to give the Corporation a bond in a sum, and with one or more sureties, satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration to the Corporation, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the Corporation. The Corporation shall pay the premiums for issuance of said bond; and

D. He shall perform such other duties as from time to time maybe assigned to him by the President or the Board of Directors.

Section 8. Vacancies: If the office of the President, Vice President, Secretary or Treasurer becomes vacant by reason of death, resignation, disqualification, or otherwise, the remaining Directors by a majority vote of the entire Board of Directors, may choose a successor or successors who shall hold office for the unexpired term in respect to which such vacancy occurred.

Section 9. Resignations: Any Director or other Officer may resign his office at any time; such resignation to be made in writing, and to take effect from the time of its receipt by the Corporation, unless some time be fixed in the resignation, then from that date. The acceptance of a resignation shall not be required to make it effective.

Section 10. Powers and Duties of Officers: The powers and duties of the Officers of this Corporation will be subject to the fact that such powers and duties, or some of them, may be delegated to a third party under a management agreement and unless delegation of such powers and duties to a third party is contrary to law, then such powers and duties so delegated will be exercised by such third party in lieu of the Officers and/or Directors of this Corporation.

#### ARTICLE IV. MEMBERSHIP

Section 1. Definitions: Each Parcel owner in the Development Area shall be ~~entitled to membership~~ a member in the Association. ~~Prior to purchasing a Parcel or becoming a lessee of a Parcel, such prospective member shall make application for membership in the Association. No person shall be allowed to purchase a Parcel or reside in a Parcel residential unit in the Development Area until such time as he has been accepted for membership in the Association.~~

#### ARTICLE V. MEETINGS OF MEMBERSHIP

Section 1. Place. All meetings of the Corporation's Membership shall be held at the office of the Corporation in ~~Whitestone~~ Gilmer County, Georgia, or such other place and time as may be stated in a notice thereof, provided that the place of the holding of such meeting shall be in ~~Whitestone~~ Gilmer County, Georgia.

Section 2. Annual Meeting:

~~A. The first Annual Meeting of Members shall be held in January, 1981.~~

~~B~~ A. Annual Meetings of the Association shall be held during the months of ~~January or February~~ April or May at the call of the Board of Directors and at such place in Ellijay, Georgia as designated by the Board of Directors.

~~C~~ B. All Annual Meetings shall be held at the hour of ~~8:00 o'clock P.M.~~ 9:30 o'clock A.M., or at such other time designated by the notice.

~~D~~ C. Written notice of the Annual Meeting shall be served upon or mailed to each Member entitled to vote thereat, at such address as appears on the books of the Corporation, ~~at least ten (10) days prior to the meeting.~~ Such notice shall be made in compliance with the laws of the State of Georgia.

Section 3. Special Meetings:

A. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute or by the Articles of Incorporation, may be called by the President, and shall be called by the President or Secretary at the request, in writing, of fifty-one (~~51%~~) percent of the total number of Members of the Association.

B. Written notice of a special meeting of Members, stating the time, place and object thereof, shall be served upon or mailed to each Member entitled to vote thereat, at such address as appears on the books of the Corporation at least ten (~~10~~) days before such meeting.

C. Business transacted at all special meetings shall be confined to the objects stated in the notice thereof.

Section 4. Quorum: Fifty-one (~~51%~~) percent of the total number of votes of Members of the Association present in person or represented by written proxy, shall be requisite to, and shall constitute a quorum at all meetings of the Members for the transaction of business, except as otherwise provided by statute, by the Articles of Incorporation, or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented at such subsequent meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called.

Section 5. Vote Required to Transact Business: When a quorum is present at any meeting, the vote of a majority of the votes of the Members present, in person or represented by written proxy, shall decide any question brought before the meeting, unless the question is one upon which, by express provision of the statutes or of the Articles of Incorporation or of these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 6. Right to Vote: Subject to the provisions of Article XII, each Parcel owner shall be entitled to one (~~1~~) vote. At any meeting of the Members, every Member having the right to vote shall be entitled to vote in person or by proxy. Such proxy shall only be valid for such meeting or, if adjourned for lack of a quorum, the subsequent meeting thereof.

ARTICLE VI.  
NOTICES

Section 1. Definitions: Whenever, under the provisions of the statutes or of the Articles of Incorporation or of these By-Laws, notice is required to be given to any Director or Member, it shall not be construed to mean personal notice; but such notice may be given in writing by mail, by depositing the same in a post office or letter box in post paid, sealed wrapper, addressed as appears on the books of the Corporation.

Section 2. Service of Notice – Waiver: Whenever any notice is required to be given under the provisions of the statutes or of the Articles of Incorporation, or of these By-Laws, or waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

Section 3. Address: The address for notice to the Corporation is ~~Box 26, Star Route, Whitestone, Georgia 30186~~ 25 Blackberry Mountain Drive #8101, Ellijay, Georgia 30536.

ARTICLE VII.  
FINANCES

Section 1. Fiscal Year: The Association shall operate upon the calendar year beginning on the 1st day of January and ending on the 31st day of December of each year. The Board of Directors is expressly authorized to change from a calendar year basis to that of a fiscal year basis whenever deemed expedient for the best interests of the Corporation.

Section 2. Checks: All checks or demands for money and notes of the Corporation shall be signed by any two of the following Officers: President or Vice President, and Secretary or Treasurer, or by such Officer or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Determination of Assessments:

A. The Board of Directors of the Association shall fix and determine from time to time the sum or sums necessary and adequate for the common expenses of the Association; and, if possible, make such determination in advance for each fiscal year. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the Association property, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto and any other expenses designated as common expenses from time to time by the Board of Directors of the Corporation; and common expenses shall also include the amounts to be paid by each member for his share under the Declaration; and the payment of all said common expenses shall be secured by the lien provided for in the Declaration. The Board of Directors or the party employed for the management of the Association may, on behalf of the Corporation, collect assessments and lease, maintain, repair and

replace the property of the Association. Assessments will be exercised equally against all members of the Association. The Board of Directors may provide for assessments to be paid in advance.

B. When the amount of any assessment has been determined, a statement thereof shall be mailed or presented to each of the Parcel owners. All assessments shall be billed quarterly and due and payable in advance on the first day of each month at the beginning of the quarter.

ARTICLE VIII.  
SEAL

The seal of the Corporation shall have inscribed thereon the name of the Corporation, the year of its organization, and the words "Non-Profit". Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

ARTICLE IX.  
STOCK

This Corporation shall never have or issue shares of stock and/or certificates of membership, nor will it ever have or provide for non-voting membership.

ARTICLE X.  
ASSOCIATION RULES

In addition to the other provisions of these By-Laws, the Board of Directors may from time to time promulgate propose House Rules and Regulations and upon ratification by the membership and together with these By-Laws, they shall govern the use of the Association property and the Development Area with respect to the Members of the Association. Such Rules and Regulations shall be considered part of these By-Laws.

ARTICLE XI.  
DEFAULT

Section 1. In the event a Member does not pay any sums, charges or assessments required to be paid to the Association within thirty (30) days from the due date, the Association, acting on its own behalf or through its Board of Directors, may enforce its lien rights for assessments or take such other action to recover the sums, charges or assessments to which it is entitled, in accordance with the By-Laws and the Blackberry Mountain Declaration of Restrictions, Covenants and Conditions or the Blackberry Mountain Rules and the laws of the State of Georgia. If an action of foreclosure is brought against the owner of a Parcel for non-payment of monies due the Association, and as a result thereof the interests of the said owner in and to the Parcel is sold, then that person will thereupon cease to be a Member of the Association.

Section 2. If the Corporation becomes the owner of a Parcel by reason of foreclosure, it shall

offer said Parcel for sale and, at such time as a sale is consummated, it shall deduct from such proceeds all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the Parcel, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the Parcel in question. All monies remaining after deducting the foregoing items of expense shall be returned to the former owner of the Parcel in question.

Section 3. The Association may suspend a Member and the members of his family. Such suspension shall result in the Member and the members of his family being barred from the use and privileges of the Association's facilities. Such suspension shall not exceed thirty (30) days for each violation; except that in the event the violation is the non-payment of Association assessments, such suspension shall not extend more than thirty (30) days after the payment of such Association assessments. Further, the Association may bring such appropriate action to enjoin such violations or enforce the provisions of these By-Laws and shall take such other legal action as it may deem appropriate. Such action or suspension shall not excuse the Member from his obligation to pay Association assessments and such assessments shall continue to accrue during such action or suspension.

ARTICLE XII.  
TERMINATION OF MEMBERSHIP

The Association reserves the right to terminate the membership of any Member for any violation of these By-Laws or, the rules and regulations which is not promptly remedied. The Association reserves the right to terminate the membership of any Member who consistently violates these by-laws or the rules and regulations. Such termination shall not relieve the Member of his obligation to pay his proportionate share of the amounts to be paid under the Declaration; and further, the Member shall remain liable for such payment even after termination of membership.

ARTICLE XIII.  
AMENDMENT

These By-Laws may only be altered, amended or added to at any duly called meeting of the ~~Directors~~ **Membership** provided, (1) that the notice of the Meeting shall contain a full statement of the proposed amendment, and (2) that there is an affirmative vote of sixty-six and two-thirds (~~66-2/3rds~~) percent of the ~~Directors~~ **Membership** present in person or by proxy in favor of such alteration, amendment or addition to these By-Laws.

ARTICLE XIV.  
CONSTRUCTION

Wherever the masculine singular form of pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so

requires. Roberts' Rules of Order shall govern the conduct of all meetings of the Members; excepting, however, that if any conflict exists between these By-Laws and said Roberts' Rules of Order, then the provisions of these By-Laws shall prevail.

ARTICLE XV.  
RULES & REGULATIONS

The ~~Board of Directors~~ **Members** may from time to time, by an affirmative vote of sixty-six and two-thirds (~~66-2/3rds~~) percent of the ~~Directors~~ **Members** present at a duly called meeting in person or by proxy, promulgate rules and regulations for the conduct of the Members and their families and guests on the Association property. Such rules and regulations shall have the same force and effect as these By-Laws.