

**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE**

PROTECTIVE COVENANTS FOR CHEROKEE BAY PHASES I, II, AND III

WHEREAS, the Owners/Developers of certain tracts of real property situate, lying, and being in the State of South Carolina, County of Oconee, known and designated as CHEROKEE BAY Phases I, II, and III, as shown and more fully described on plats found in Plat Book P-51, Page 110 and dated January 13, 1986 (Phase I) and Plat Book P-51, Page 149 and dated April 4, 1986 (Phase II) both by Landrith Surveying of Greenville, South Carolina; and Plat Book P-56, Page 393 and dated April 4, 1986, revised October 19, 1988 (Phase III) by C.E. Shehan Surveying, RLS #8810; all in the Office of the Register of Deeds for Oconee County, South Carolina;

WHEREAS, said Owners/Developers caused certain protective covenants, easements and restrictions to be imposed upon the above-described real property, as more fully appear in Deed Book 442, Page 10 recorded on January 17, 1986 (Phase I), Deed Book 467, Page 26 recorded on August 27, 1986 (Phase II), and Deed Book 564, Page 129 recorded on January 12, 1989 (Phase III); all in the Office of the Register of Deeds for Oconee County, South Carolina;

WHEREAS, said Owners/Developers did covenant and agree that the real property shall be used as a residential subdivision and that said covenants, easements and restrictions shall be for the mutual benefit and profit of the Owners/Developers, its successors and assigns, and shall run with the land and shall be binding upon the Owners/Developers, and shall be for the benefit of all present and future owners of lots in the subdivision;

WHEREAS, the above-described covenants, easements and restrictions for Phases I, II, and III are identical;

WHEREAS, in 1998, the Owner/Developer turned the authority for the subdivision over to the Cherokee Bay Development Home Owners' Association, Inc.;

WHEREAS, the Owner/Developer transferred Lot No. 4, which included the clubhouse, pool, and other access areas to the Home Owners' Association by warranty deed recorded on July 2, 1998, in Deed Book 984, Page 210 in the Office of the Register of Deeds for Oconee County, South Carolina;

WHEREAS, pursuant to the amendment procedure contained therein, the above-described covenants, easements and restrictions were properly amended by modification, substitution and/or addition by a majority vote of the owners on November 30, 2001, and said amendments were attested to and certified by the Board of Directors of the Cherokee Bay Property Owners Association, Inc. on March 17, 2002, and recorded on April 22, 2002, in Deed Book 1214, Page 1 in the Office of the Register of Deeds for Oconee County, South Carolina; and

WHEREAS, pursuant to the amendment procedures contained in the amended covenants, easements and restrictions, the owners of the lots within the subdivision voted on _____, 201____, to further amend by modification, substitution, and/or addition and to consolidate and restate the entire declaration of covenants, easements and restrictions, as these “Protective Covenants” stated hereafter, and said Protective Covenants were adopted, attested to, and certified by the Board of Directors of the Cherokee Bay Property Owners Association, Inc. on _____, 201____, and recorded on _____, 201____, in Deed Book _____, Page _____ in the Office of the Register of Deeds for Oconee County, South Carolina.

NOW THEREFORE LET IT BE KNOWN, that the Protective Covenants for Cherokee Bay Phases I, II, and III are hereby, in their entirety, as follows:

ARTICLE I DEFINITIONS

“Architectural Review Committee” means the committee endowed with the powers and duties as described herein and in the By-Laws.

“Association” means the Cherokee Bay Development Home Owners’ Association, Inc., a South Carolina nonprofit corporation.

“Board” means the Board of Directors of the Association.

“By-Laws” means the bylaws adopted by the Association and the properly adopted amendments and revisions thereto.

“Cherokee Bay subdivision” or “Subdivision” means the real estate development containing the Property Subject to the Protective Covenants as shown on the Plats, and any real property added or merged into the development and shown on any plats subsequently approved by the Association.

“Common Area and Amenities’ means any areas and facilities, including but not limited to the clubhouse, swimming pool, spa, picnic area and other common recreation areas, roads, and easements that are commonly owned and maintained for the enjoyment and benefit of the Association. The marina facilities, including the privately owned docks, are not included in the Common Area and Amenities.

“Lot” means a portion of the Property whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall refer to the land, which is part of the Lot as well as any improvement(s) thereon. The term shall not include property owned by the Association or property dedicated to the public.

“Member” means a current record owner of a Lot in the Cherokee Bay subdivision or of any lot or tract that is added or merged into the Cherokee Bay subdivision or any lot or tract that

becomes subject to the Protective Covenants or to assessments.

“Owner” means:

- (i) Any person who holds title to a lot; or
- (ii) Any person who has contracted to purchase title to a lot under written agreement, in which case the Seller under said agreement shall cease to be the Owner while said agreement is in effect.

“Person” means an individual, corporation, partnership, limited liability company, limited partnership, trustee, or any other legal entity.

“Property” means the real property described herein as the Property Subject to the Protective Covenants, and as may be amended or supplemented from time to time to reflect any addition or removal of real property in the Cherokee Bay subdivision.

“Protective Covenants” mean the covenants, easements, and restrictions found in the provisions herein which are properly adopted and recorded in the Office of the Register of Deeds and which govern the operation of the Cherokee Bay subdivision, and any amendments, supplements, restatements, properly adopted and recorded with the Office of the Register of Deeds of Oconee County, South Carolina.

“Plat” means the plats of survey described in Article II of the Protective Covenants and which described the real property that is subject to the Protective Covenants and the jurisdiction of the Association.

ARTICLE II PROPERTY SUBJECT TO THE PROTECTIVE COVENANTS

1. The real property subject to these covenants shall be as shown on the plats found in Plat Book P-51, Page 110 and dated January 13, 1986 (Phase I) and Plat Book P-51, Page 149 and dated April 4, 1986 (Phase II) both by Landrith Surveying of Greenville, South Carolina; and Plat Book P-56, Page 393 dated April 4, 1986, and revised October 19, 19008 (Phase III) by C.E. Shehan Surveying, RLS #8810; all in the Office of the Register of Deeds for Oconee County, South Carolina. Said real property being designated as Phase I Lots Number One (1) through Eleven (11), Forty-two (42) through Seventy-two (72); Phase II Lots Number Twelve (12) through Thirty-nine (39); and Phase III Lots Number Seventy-five (75) through Eighty-two (82).

2. The Association reserves the right to construct and develop additional land near and adjacent to this development and to remove real property from the development and reserves the right to allow the owners, their successors and assigns to use the roadways, common areas, and planned amenities to this section of CHEROKEE BAY.

Said addition or removal of real property to or from the development shall require the approval of sixty-seven per cent (67%) of the Members eligible to vote.

3. Lots may be divided and/or merged in order to increase the size or adjoining lots so long as no resulting lot is smaller than the original lot. Any divided lot shall be assessed on a prorated basis to the owner of the adjacent combined lot. No partial lot shall be considered eligible for a vote.

4. Previously merged lots may be divided into lots by recommendation of the Architectural Review Committee and approval by the Property Owner's Association, removal of any new or preexisting encroachment of the side line setbacks, and the filing of a new survey and property line agreement restoring the two lots as separate lots so long as no resulting lot is smaller than the original lot.

ARTICLE III MEMBERSHIP

Every current record owner of a Lot in the Cherokee Bay subdivision or of any lot or tract that is added or merged into the Cherokee Bay subdivision or any lot or tract that becomes subject to the Protective Covenants or to assessments shall be a member of the Association, and shall be subject to these Protective Covenants and the By-Laws, as may be amended time to time and to the jurisdiction of the Association.

ARTICLE IV PROPERTY USE

1. These lots shall be used solely end exclusively for residential purposes, and no mobile home, trailer, tent, shack, or like structure, may be placed on any lot for use as a dwelling at any time. The lots on the plat of CHEROKEE BAY, PHASE III shall adopt these restrictions, covenants and conditions and shall be used exclusively for residential purposes, and only a single family residence and a private garage may be erected, altered, placed or permitted to remain on any lot. This shall not exclude, inground swimming pools. No above-ground swimming pool may be used or placed on any lot.

2. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, and no business activities of any kind or type shall be carried on upon the premises.

3. Trash shall be kept in the rear of each unit except on collection day and shall be maintained in customary trash containers. No debris, junk, trash, garbage, derelict automobiles, vehicles or refuse may be kept on any lot at any time.

4. No animal shall be kept or permitted to be kept on the premises except dogs and cats or other household pets provided, however, no animal shall be kept or bred for commercial purposes on the premises and in no event shall there be more than two (2) pets allowed to be kept on the premises. Any pet kept on the premises as allowed above shall be kept enclosed in a fence on the rear of the premises. Any fence for the keeping of pets must be approved by the Architectural Review Committee.

5. No school buses or trucks, other than pick-up trucks, vans, recreational vehicles, or boats may be parked on the premises, or on any easement or street or parking area, or in any green space reserved.

6. No automotive or vehicle maintenance may be done on the premises or parking areas or

easements or streets or common areas at any time.

7. No heavy truck or trailer shall be parked on any lot in the roadways, easements, or common areas in this subdivision at any time, except for the purposes of loading and unloading, no house trailer, disabled vehicle, or unsightly machinery or junk may be placed at any time on any lot either temporarily or permanently, and the Architectural Review Committee designated herein shall, at the owners expense, remove any such house trailer, disabled vehicle, or unsightly machinery or junk from any lot and the owner of such lot shall be responsible for any fees and costs incurred therewith. Nothing herein shall preclude a self contained recreational vehicle as temporary living quarters by the owner of a lot during the construction of the owners' dwelling.

8. No commercial signs or advertising posters of any kind shall be erected, placed or maintained on any lot or house except for one realtor or professional "For Sale" sign, not to exceed eighteen (18) inches in size to be mounted on a post or stand no than 18 inches from the ground. No attachments such as informational tubes, boxes or signs may be attached to the "For Sale" sign. In the event of any non-compliance, one warning shall be given to the property owner and/or the realtor. If not remedied within seven (7) days, a fine of \$50 will be imposed and signage will be removed. This restriction shall not prohibit the Board of the Property Owners' Association from authorizing specific temporary signage if judged beneficial to Association Members, or other signs as may be required by legal proceedings.

9. Any satellite dish antennas shall not exceed thirty-six (36) inches in diameter and shall be located in the most aesthetically pleasing position.

10. No lot or improvement thereon shall be used, sold, developed divided or in any way used as a timeshare program or ownership as that term is defined by Section 27-32-10, et seq., of the South Carolina Code of Laws, 1976, as amended. No lot or improvement thereon shall be constructed and or used primarily for rental use.

11. There shall be no clear cutting of any wooded lot allowed without the prior written approval of the Architectural Review Committee. However, any vegetation six- (6) inches or less in diameter, as measured one (1) foot above ground, may be removed at any time without approval. Seventy-five (75) percent of vegetation over six (6) inches in diameter, as measured one (1) foot above ground, before or after construction of a residential dwelling shall be preserved. However, any vegetation that is diseased, dead or dangerous may be removed.

12. Boats on trailers or boat and utility trailers in operating condition may be stored on standard automobile parking areas.

13. No vehicle, boat, trailer, other equipment, etc., may be regularly parked adjacent to roadways or on Association property without prior POA permission. Such units may be temporarily parked adjacent to roadways under the following conditions:

The duration is less than 24 hours, such as for visitors, parties, disabled vehicles, etc.;

No part of any parked unit shall be upon the paved roadway so as to create unusual safety problems;

No parking space is available off the roadway;
The owner hosting the parking shall be responsible for damage to shoulders and ditches as a result of temporary parking.

14. The use of fireworks of any type is expressly prohibited within Cherokee Bay, Phase I, II and 111, boundaries except that the Board may approve organized fireworks displays if such displays are properly supervised, approved prior to the event, and include a fire protection plan.

15. The discharge of any weapon whether manufactured or homemade which fires a projectile is hereby prohibited without prior permission of the POA Board or its designee.

16. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall be confined to an enclosed structure on the lot.

ARTICLE V CONSTRUCTION STANDARDS

1. Before construction or alteration on any lot, one (1) set of building plans, specifications and exterior color scheme together with the sum of Twenty-five (\$25.00) Dollars must be submitted to the Architectural Review Committee for its consideration.

2. A site plan shall be submitted to the Architectural Review Committee for approval. The site plan shall show driveways, patios, decks, associated buildings, planned fences, walls, road, culverts, parking area, tennis court, swimming pool or any other structure or improvement of any kind, exterior elevations and materials, colors and finishes. The site plan shall also show the landscape layout which shall include, as a minimum, finish grading of all areas disturbed by construction activity, and a drainage plan depicting culvert locations and other means for controlling surface water run-off.

3. The exterior of all residences and other structures must be completed within one (1) year after commencement of construction and the landscaping must be completed within one hundred twenty (120) days thereafter, except, in each case where, in the sole discretion of the Architectural Review Committee such completion is not possible or would result in great hardship to the owner or builder due to weather, strike, fire, national emergency or natural calamity. No structure shall be used at any time, either temporarily or permanently, as a residence until the exterior of such structure is complete.

4. All dwellings shall be constructed with the use of high quality of materials and workmanship to insure that no dwelling will present an unsightly appearance and all dwellings shall have minimum ground floor area of the main structure, exclusive of open porches, garages, and basements of not less than eleven hundred eighty (1180) square feet for a one-story dwelling, nor less than sixteen hundred (1600) square feet for a dwelling of more than one story, provided nine hundred (900) square feet shall be the minimum first (1st) floor area, excluding open porches, garages, and basements. Dwellings with lofts shall be considered a one story dwelling, however,

the loft area shall not be considered when determining the square footage requirements.

5. No building shall be erected, altered, placed, or permitted to remain on any lot other than one (1) detached single family dwelling, not to exceed two and one-half (2½) stories in height. No masonry construction shall be such that no concrete block is exposed to any outside view of the premises.

6. No building shall be located on any lot nearer to the front lot line than thirty (30') feet, and any nearer to any roadside of a lot than thirty (30') feet, nor nearer to any side lot line than five (5') feet, provided, however, should these setback requirements create, in the opinion of the Association or its successors, heir, or assigns, a hardship, then the Association or its successors, heirs, or assigns, may grant a variance.

7. All new and existing driveways and parking spaces shall be hard surface, composed of materials approved in writing by the Architectural Review Committee and any culverts, pipes or conduits for water placed in or under driveways shall be covered at points of protrusion from driveways or the ground with materials approved by the Architectural Control Committee. Existing driveways and parking spaces shall be brought into compliance with this protective covenant and restriction within ninety (90) days of the date of the recording of these amended restrictions.

8. Any fencing used or erected on the premises shall be of wood, or masonry construction, and shall not exceed four (4') feet in height from ground level, and shall be constructed in a manner so as to enhance the beauty of the development and in keeping with the materials and designs of all structures. All fencing must be approved by the Architectural Review Committee. All fencing must be constructed in a permanent and professional manner so as not to detract from the subdivision or any improvements thereon.

ARTICLE VI MAINTENANCE

1. Each owner, after construction of a dwelling, or any improvements made to the premises, shall maintain the outward appearance of the dwelling or improvements, in such a fashion so as not to detract from the other premises.

2. Each owner shall maintain the yard of its premise so as not to detract from the neighborhood or any other lot within said development. In the event that in the opinion of the Architectural Review Committee that such yard is not maintained and detracts from the neighborhood or other lots in the development, and after thirty (30) days notice from the Architectural Review Committee to said owner of such detraction, the owner does hereby authorize the Architectural Review Committee to perform or have such yard work performed to correct the detraction, and the owner agrees, to pay the sum of Seventy-five (\$75.00) Dollars for such work. In the event that such is not paid by the owner, it shall constitute a lien against the premises.

3. The Association shall not be liable for damages caused by erosion, washing, or other action of the water of Lake Hartwell, nor as to the water level of Lake Hartwell or action by the U.S.

Army Corps of Engineers.

4. Damage to any roadway, waterline, powerline, road sign, or any other improvement to the subdivision, done or caused by an owner, his agents, employees, contractors, or any other person employed by, or under the supervision or control of the owner, shall be the responsibility of said owner, and must be repaired or replaced to a condition as approved by the Architectural Review Committee at the sole expense of said owner.

**ARTICLE VII
ARCHITECTURAL REVIEW COMMITTEE**

An Architectural Review Committee is hereby established for the regulation, design, appearance, use, and location of the structures to be constructed in this subdivision and have all other authorities reasonably being from and required by these covenants and restrictions so as to preserve and enhance the values and maintain a harmonious relationship amongst the structures of this subdivision. The Architectural Review Committee shall consist of two (2) persons designated by the Association, its successors and assigns. Provided, however, that after a majority of the lots in this subdivision have been sold, the Association, at its sole option, may allow the then owners thereof, between themselves to elect the Architectural Review Committee, and that such committee then shall consist of at least three (3) persons who are property owners in the subdivision. After election of the three (3) persons to the committee, in the event of the death or resignation of any member of said committee, the remaining members shall have full authority to approve or disapprove such design and location, or to designate a representative with like authority. Provided further, it shall be the duty of the then property owners to within ninety (90) days of such resignation or death to elect a replacement for the deceased or resigned member.

**ARTICLE VIII
EASEMENTS**

1. Easements for the installation and maintenance of utilities and drainage facilities are reserved over the front and rear lot lines of twenty (20') feet, and over the side lot line of five (5') feet. This easement shall also extend where fractional lots are owned. All owners of lots in the subdivision hereby agree to accept surface water from culverts and roadways and waive any claim for damage from such.

2. Cherokee Bay Subdivision, Phase I, II and III, shall be a closed community. The only access to the Lots and Parcels in this subdivision shall be by way of Rock Hill Road and there shall be no other access for ingress and egress to any of the Lots or Parcels that are a part of the aforementioned Subdivision.

**ARTICLE VI
ASSESSMENTS**

1. Any person who acquires any lot or parcel within the Subdivision, irrespective of how such

lot is acquired, whether by conveyance, inheritance, gift or any other method, shall, at the time the title is acquired, be bound by these Covenants and shall be personally liable for and shall pay all fees, assessments, and other charges due at the end of the fiscal period in accordance with the provisions of these Covenants and provisions of the Association 's Bylaws, as either or both may be amended from time to time.

2. Each lot owner other than the Association, shall pay to the Association the sum of Three Hundred (\$300.00) Dollars per year for roads, signs, entrance and access area maintenance, and other amenities maintenance. That said sum shall be due on January 1st of each year provided, however, the first payment shall be paid at the date of closing and shall be pro-rated for the remainder of the then calendar. Association reserves the right to increase such sum in accordance with the Consumer Price Index. The Association reserves, in its sole discretion, the right to transfer such fee collected and maintenance to the Property Owners' Association, when and if formed. Such Property Owners' Association shall hereby agree to accept such responsibility.

3. Each property owner shall be personally liable for such fees, charges, costs and assessments contemplated by these covenants and/or imposed pursuant to the Association's Bylaws, as amended from time to time. Any assessment or portion thereof, which is not paid when it falls due, shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the Association shall levy late fees and interest pursuant to its By-Laws or regulations from the date of delinquency. The Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, and, in either event, late fees, interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of the Owner's Unit or Lot.

ARTICLE VII ENFORCEMENT

1. The various restrictive measures and provisions of this instrument are declared to constitute mutual restrictive covenants and servitudes for the protection and benefit of each lot; failure by the undersigned or any other person or persons entitled to do so to enforce any measure or provision upon violation thereof shall not stop or prevent enforcement thereafter or be deemed a waiver of the right to do so, and in the event that any enforcement is required by the undersigned, its successors and assigns, or by the Architectural Review Committee as established herein, or any other person or entity having a right to enforce these covenants and restrictions, and that person or entity held to violate these covenants and restrictions shall be required to pay fees and costs expended in the enforcement of these covenants and restrictions to include, but not be limited to a reasonable attorney's fee.

2. Enforcement of these presents may be judicial proceedings at law and equity against any person or persons or entity violating or attempting to violate any covenant either to restrain such violation or recover damages.

3. By ownership of any Lot or Parcel within the subdivision, the Lot Owner submits himself to

the jurisdiction of the Courts of Oconee County, South Carolina, agrees that the venue for all legal actions for the collection of assessments and/or the collection of liens, or any other legal action involving a Lot or Parcel or the improvements upon such Lot or Parcel, shall be the Court of Oconee County, South Carolina.

ARTICLE VIII
GENERAL PROVISIONS

1. These covenants and restrictions shall run with the land and shall bind the owners of all lots and units, their heirs, executors, assigns, successors and personal representatives.
2. All of the restrictions, covenants, easements and agreements contained herein shall continue for a period of twenty-five (25) years and automatically continue for succeeding ten (10) year periods thereafter, except that they may be changed, altered, amended or revoked in whole or in part, by two-thirds (2/3) majority of votes cast in each of two consecutive votes held not less than three (3) months apart. Each assessed lot is entitled to one (1) vote.
3. Any such amendment, change, alteration or revocation shall be caused to be placed under the records of the Clerk of Court, in and for Oconee County, South Carolina, and said amendment, change, alteration or revocation shall have immediate effect upon all lots subject hereto.
4. Invalidation of any of these covenants, restrictions or provisions by judgment or court order of a Court of competent jurisdiction shall in no way affect the application of such provisions to other circumstances or any other provision of these covenants and restrictions, which shall remain in full force and effect.
5. Any person who brings an action challenging these Covenants, the assessments, or any provision of the Bylaws shall pay the legal fees and costs of the Association in defending the action, if such person is not successful in obtaining a judgment or ruling in his favor.