

Doc ID: 000683010040 Type: GLR  
Filed: 12/01/2003 at 03:18:54 PM  
Fee Amt: \$88.00 Page 1 of 40  
Forsyth, GA  
Douglas Sorrells Clerk Superior Ct  
BK 3133 PG 358-397

SPACE ABOVE THIS LINE FOR RECORDING DATA

AFTER RECORDING RETURN TO:

STATE OF GEORGIA

COUNTY OF GWINNETT

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR SIENNA

THIS DECLARATION ("this Declaration") is made on the date hereinafter set forth by YOST COMMUNITIES, INC., a Georgia corporation (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Land Lot 14 of the 2<sup>nd</sup> District, 1<sup>st</sup> Section, and in Land Lots 1201, 1247, 1248, 1273 and 1274 of the 3<sup>rd</sup> District, 1<sup>st</sup> Section, of Forsyth County, Georgia, which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration; and,

WHEREAS, the Declarant intends to develop on lands including the real property described above a development to be known as Sienna (hereinafter referred to as the "Development"); and,

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined);

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit "A" shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions, Easements and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of, and which shall run with, the real property, and be binding on all parties having any right, title or interest in the described property or any part thereof, and shall, subject to all limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions, Easements and Restrictions, shall have the following meanings:

1.01 Additional Property. "Additional Property" means the additional property which may be added to the Property and made subject to this Declaration pursuant to Article X hereof.

1.02 Association. "Association" means Sienna Homeowners Association, Inc., a non-profit corporation organized under the Georgia Nonprofit Corporation Code, and its successors and assigns.

1.03 Board. "Board" means the Board of Directors of the Association.

1.04 By-Laws. "By-Laws" means the By-Laws of the Association.

1.05 Common Property. "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners.

1.06 Declarant. "Declarant" means Yost Communities, Inc., a Georgia corporation, and its successors and assigns, including, but not limited to, any person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which acquires all or substantially all of the Development then owned by Declarant (or subsequent successors in interest), together with its rights hereunder, by conveyance or assignment from Declarant, or judicial or non-judicial foreclosure, for the purpose of development and/or construction on the Property.

1.07 Lot. "Lot" means any numbered parcel of land shown upon that certain plat of survey prepared by Ringo Abemathy & Associates, dated \_\_\_\_\_, 2003, and recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Forsyth County, Georgia Records, or as similarly shown on supplemental surveys of such tract or such additional tracts as may be added to the Property from time to time, as provided herein; provided however, that no portion of the Common Property shall ever be a Lot except as provided for in Section 2.04.

1.08 Member. "Member" means any member of the Association.

1.09 Open Space. "Open Space" means that portion of the Common Property which has been or will be subjected to a conservation easement in favor of Forsyth County, Georgia.

1.10 Owner. "Owner" means the record owner (including Declarant) whether one or more persons or entities, of fee simple title to any Lot, provided, however, that where fee simple title has been transferred and is being held merely as security for repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.11 Property. "Property" means that certain real property (other than Common Property) hereinabove described.

1.12 Restrictions. "Restrictions" means all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.13 Structure. "Structure" means any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot.

## ARTICLE II

### COMMON PROPERTY

#### 2.01 Conveyance of Common Property.

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration of Covenants, Conditions, Easements and Restrictions, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property previously conveyed to the Association, or contemplated to be conveyed to the Association, in accordance with this subsection (b) of this Section 2.01 at any time prior to such time as Declarant no longer has the right to appoint and remove members to the Board in accordance with Section 3.08 hereof.

(c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

2.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Section 2.03 (c) and 3.06.

2.03 Right of The Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

(b) charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

(c) suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;

(d) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

(e) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;

(f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources; provided, however, that the Common Property may not be mortgaged or pledged except upon the affirmative vote of seventy-five percent (75%) of the Owners.

(g) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by an such municipality or other governmental body, agency or authority;

(h) to sell, lease or otherwise convey all or any part of its properties and interest therein, provided that at least seventy-five percent (75%) of the Owners have, by affirmative vote, consented thereto.

2.04 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of each class of Member of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant.

(a) It is contemplated that certain easements for the erection and maintenance of entrance monuments and landscaping, subdivision signs, wall, fences, detention/retention ponds and related facilities, and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Development will be reserved by the Declarant and set forth on plats or survey of the Development recorded in the County Records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. Said easement areas shall be designated as such and all Owners taking title to any Lot upon which such easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

(b) Encroachment Easements. If any buildings or other improvements initially constructed on any of the Lots, including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls and roof of such buildings, and which may encroach onto or over or extend into the air space of any portion of the Common Property, or, conversely, if any such improvements initially constructed on the Common Property encroach onto or over portions of any Lot, a valid easement for the encroachment and for the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

(c) Detention/Retention/Water Quality Ponds. The Association shall have the right and obligation to maintain all detention, retention and water quality ponds within the Development.

2.05 Delegation of Use. Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, his right to use and enjoy the Common Property.

### ARTICLE III

#### THE HOMEOWNERS' ASSOCIATION

3.01 Purposes. Powers and Duties of The Association. The Association shall be formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the residents of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the residents of the Development. To the extent, and only to the extent, necessary to carry out such purpose, the Association shall have (a) all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code, and (b) the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration and in the Georgia Property Owner's Association Act.

3.02 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Conditions and Restrictions.

3.03 Voting Rights. Subject to the following provisions of this Section 3.03, the Association shall have two classes of voting membership; Class A and Class B.

(a) Class A. Every person who is an Owner, with the exception of the Declarant except as otherwise set forth herein, shall be a Class A member and shall be entitled to one vote for each Lot owned. When more than one person is a Class A member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of them to cast the vote of such Lot, such persons shall not be recognized and the vote of such Lot shall not be counted. The membership of Class A members shall automatically terminate upon the member's sale of such members Lot.

However, no termination of Class A membership shall affect such member's obligation to pay assessments, as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

(b) Class B. The Declarant shall be the sole Class B member. Class B membership shall be a full voting membership and during its existence the Class B member shall be entitled to vote on all matters and in all events. The Class B member shall be entitled to three (3) votes for each Lot owned by it. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur; (a) the expiration of five (5) years from the date of recording of this Declaration; (b) the date as of which one hundred percent (100%) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either the Declarant or by a builder who purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; or (c) the surrender by the Declarant of the authority to appoint and remove members of the Board of the Association by an express amendment to this Declaration executed and recorded by the Declarant; provided, however, that so long as any Mortgagee of Declarant holds a security interest in any portion of the Property, as security for a Development Loan to Declarant, the Class B membership shall not terminate without the prior written consent of such Mortgagee. If at the time of

termination of the Class B membership, Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A member.

#### 3.04 Board of Directors and Officers.

(a) Board. The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the By-Laws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation Code or this Declaration, the Association's By-Laws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

(b) Officers. The number of officers and the method of election of officers shall be as set forth in this Declaration and the By-Laws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, officers of the Association shall be appointed by the Board until such time as Declarant no longer has the right to appoint members to the Board.

(c) Casting of Votes. The votes of the members shall be cast under such rules and procedures as may be prescribed on this Declaration or in the By-Laws of the Association, as amended from time to time, or by law.

3.05 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in this Declaration and the By-Laws of the Association.

3.06 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who;

(a) shall be subject to the Right of Abatement, as defined in Section 8.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11 or 8.02 hereof

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof or

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property;

(d) any suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 3.06, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.07 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.

3.08 Control by Declarant and Appointment of the Board. Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles

of Incorporation, or in the By-Laws of the Association, the Declarant hereby retains the right to appoint two (2) members to the Board. The rights of Declarant to appoint members of the Board also includes the right to remove and replace its appointees until such time as its right to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove its members of the Board until such time as the first of the following events shall occur; (i) the expiration of five (5) years from the date of the recording of this Declaration; (ii) the date upon which one hundred percent (100%) of the Lots which may be developed on the Property and on the Additional Property shall have been conveyed, by either Declarant or by a builder who purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, to an individual Owner or Owners for residential occupancy; or (iii) the surrender by Declarant of the authority to appoint and replace directors by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the Declarant's right to appoint and remove directors of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant, if Declarant then owns one or more Lots. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association, a special meeting of the Association shall be called. At such special meeting, the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner by acceptance of a deed to or other conveyances of a Lot vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.09 Distribution of Assets Upon Dissolution. In the event of the dissolution of the Association, the assets thereof shall be distributed to one or more public bodies, corporate or politic, or conveyed to one or more non-profit organizations having purposes similar to those of the Association.

#### ARTICLE IV

#### ASSESSMENTS AND MAINTENANCE CHARGES

4.01 Covenant for Assessments and Creation of Lien and Personal Obligations. The Declarant, to the extent that Declarant is an Owner, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows;

(a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.07 hereof and costs of collection including reasonable attorney's fees;

(d) that such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all

deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures;

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessment thereafter assessed;

(f) that all annual and special assessments (together with interest thereon as provided in Section 4.07 of this Declaration and costs of collection including reasonable attorneys's fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in Section 4.0 1(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lot owned by him; provided, however, that such personal obligation for delinquent assessment shall not pass to an Owner's successor in title unless expressly assumed by such successor.

4.02 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the residents of the Development, including, but not limited to, and in addition to other purposes set forth in this Declaration, maintenance, insurance and taxes on the Open Space, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, enforcement of the Restrictions contained in this Declaration, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 Annual Assessment or Maintenance Charge. Subject to the terms of this Article, each Lot in the Property is hereby subjected to an annual maintenance charge for the purpose of creating a fund to be known as the "Maintenance Fund" which maintenance charge and assessment will be paid by the Owner or Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association) in advance in monthly, quarterly or annual installments. The annual maintenance charge and assessment will commence as to each Lot on the first day of the month following the earliest to occur of the following events; (a) upon the occupancy of a permanent dwelling located on the Lot as a residence; or (b) upon the conveyance of the Lot by Declarant to an Owner or tenant for residential occupancy; or (c) upon the conveyance by a builder who has purchased the Lot from Declarant for the purpose of erecting a dwelling thereon to an Owner or tenant for residential occupancy. Neither the Declarant nor any builder who has purchased a lot from Declarant for the purpose of erecting a dwelling thereon shall be subject to the annual maintenance charge and assessment. Notwithstanding the preceding, the annual maintenance charge and assessment will commence as to each Lot owned by Declarant or a builder upon the occupancy of a permanent dwelling located thereon as a residence. The Declarant is authorized, although not required, to advance funds to the Association necessary to further the purposes of the Association, and in the event such funds are advanced, the repayment of same shall be secured by a lien upon the property of the Association. Beginning on the date hereof, and from year to year thereafter, the annual maintenance charge and assessment shall be in such amount as the needs of the Association may, in the judgment of the Board of Directors require. Whether such assessment shall be payable monthly, quarterly or annually, and the due dates thereof, will be determined by the Board of Directors. The Association shall use the proceeds of said maintenance fund in providing for normal, recurring maintenance charges for the Common Property for the use and benefit of all residents of said Property. Such uses and benefits to be provided by said Association may include, by way of clarification, and not limitation, any and all of the following; normal, recurring

maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for existing landscaping and maintaining and repairing recreational facilities, buffers and open spaces within the Development) and the acquisition and installation of capital improvements to such Common Property, such as sprinkler systems, providing that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employment of security guards or watchmen, if determined necessary; caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the Board or membership of the Association to keep the property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the majority of the Members of the Association in the expenditure of said funds and the determination of which constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Property. The fund shall be established and maintained out of regular annual assessments.

4.05 Initiation Fee. Special Assessments. In addition to the annual assessment authorized by this Article IV, the Association may levy:

(a) upon the first sale to an Owner who will individually or through tenants or assigns occupy a Lot, such sale to be made by Declarant or by a builder who has purchased the Lot from Declarant for the purpose of erecting a dwelling thereon, an initiation fee in the amount of \$, which shall be collected at the closing of such sale for the benefit of the Association, for the purpose of, including, without limitation, the payment the deficit, if any, between the actual operating expenses of the Association and the sum of the annual, special and specific assessments collected by the Association in any fiscal year. Any portion or all of these funds shall be placed either in the general operating account of the Association or in a segregated account for the Association; and,

(b) in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of each class of Members of the Association who are present in person or by proxy at a meeting duly called for such purpose.

4.06 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.04 or 4.05 shall be sent to all Members, or delivered to their residence, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. 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. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.07 Effect of Nonpayment of Assessments. Any Assessment which is not paid within thirty (30) days after the Due Date shall bear interest from the Due Date at the rate of twelve percent (12%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment on or before the date on which payment is due, such unpaid portion

(including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration.

4.08 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

## ARTICLE V

### ARCHITECTURAL CONTROL

5.01 Architectural Control Committee: Creation and Composition. An Architectural Control Committee (the "ACC") shall be established consisting of three (3) individuals to be appointed by the Board of Directors.

5.02 Purpose. Powers and Duties of the ACC. The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any structure on any Lot. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.03 Officers. Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the ACC.

5.04 Operations of the ACC.

(a) Meetings. The ACC shall hold regular meetings at least once every three (3) months or more often as may be established by the ACC. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting,

the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b) Activities.

(i) The ACC shall adopt and promulgate the Design Standards described in Section 5.05 hereof and shall, as required, make findings, determinations, rulings, and orders with respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be satisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

5.05 Design Standards.

(a) The ACC shall from time to time adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of:

(i) governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(ii) governing the procedure for such submission of plans specifications;

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) assuring the conformity and harmony of external design and general quality of

the Development.

(b) The ACC shall make a published copy of its current Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ACC/AEs approval.

5.06 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including where applicable, and without being limited to:

(a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;

(b) a foundation plan;

(c) a floor plan;

(d) the exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures shall appear after all back-filling and landscaping are completed;

(e) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and

(f) plans for landscaping and grading.

5.07 Approval of Plans and Specifications. Upon approval by the ACC of any plans and specification submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

5.08 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

(a) the failure to include information in such plans and specifications as may have been reasonably requested;

(b) the failure of such plans or specifications to comply with this Declaration or the Design Standards;

(c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development as set forth in the Design Standards, or (ii) as to location to be incompatible with topography, finished ground elevation and

surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.09 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

5.10 Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.11 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.

#### 5.12 Certification of Compliance.

(a) Upon completion of the installation, construction or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and Lot upon which such Structure is placed, and stating that the plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specifications on file with the ACC.

(b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts herein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warranty to any one the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment. The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation other than those of the ACC.

5.13 Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.14 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.15 Liability for Defects. The Declarant, the Association, the Board of Directors, officers of the Association, or the ACC shall not be liable for any defects in any plans and specifications which it approves.

## ARTICLE VI

### GENERAL COVENANTS AND RESTRICTIONS

6.01 Application. The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.

6.02 Residential Use. All Lots shall be used for single-family residential purposes exclusively. Not more than one (1) single-family dwelling, not to exceed two and one-half (2 ½) stories in height, excluding basement, shall be erected on any Lot, unless otherwise approved, in writing by the ACC.

6.03 Setbacks and Building Lines.

(a) Setback Lines. Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines shown on the recorded plat thereof. With the approval of the ACC, the Owner may change or reduce building setback lines provided it complies with the local Planning and Zoning Resolution. Any variance must be approved by the local authority.

(b) Retainer Walls. No wall shall be erected on any Lot nearer to any street than said minimum building setback lines unless the same be retaining walls of masonry construction which do not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to walls which have been approved by the ACC. The exposed part of retaining walls shall be made of clay, brick, natural stone, stucco, railroad ties, or veneered with brick or natural stone.

(c) Subdivision of Lots. One or more Lots or parts thereof may be subdivided or combined to form one single building Lot when approved in writing by the ACC, and, in such event, the building line requirements provided herein shall apply to such Lots as re-subdivided or combined.

(d) Terraces. Eaves and Detached Garages. For the purpose of determining compliance or non-compliance with the foregoing building line requirements, terraces, stoops, eaves, wing-walls, and steps extending beyond the outside wall of a structure, shall not be considered as a part of the structure. A five foot (5') side and/or rear yard shall be required for any detached garage or accessory outbuilding which has been approved, in writing, by the ACC; provided, all such detached structures must be to the rear of the main dwelling and must not encroach upon the property of any adjacent owner.

6.04 Building Requirements. The living areas of the main structures, exclusive of open porches, porte-cocheres, garages, carports and breezeways, shall be not be less than \_\_\_\_\_ square feet for one-story and \_\_\_\_\_ square feet for two-story.

6.05 Obstructions to View at Intersections. The lower branches of trees or other vegetation shall not be permitted to obstruct the view at intersections.

6.06 Delivery Receptacles and Property Identification Markers. The Architectural Control Committee shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles, as well as property identification makers.

6.07 Use of Outbuildings and Similar Structures. No structure of a temporary nature unless approved in writing by the ACC shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently; provided, this paragraph shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

6.08 Completion of Construction. The ACC shall have the right to take appropriate court action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction of the foundation, or, at the discretion of the ACC, this time period may be extended for a period not to exceed one (1) year.

6.09 Livestock. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. Such household pets must not constitute a nuisance or cause unsanitary conditions.

6.10 Offensive Activities. No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the owners of other Lots in the subdivision.

6.11 Signs. No advertising signs or billboards shall be erected on any Lot or displayed to the public on any Lot or within the right of way, except a professional sign one (1) square foot in size, and a sign of not more than 5 (five) square feet in area may be used to advertise the property for sale or rent. Any sign placed on any Lot must meet the standards and approval of the ACC, at its sole discretion. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole, nor to signs for selling lots and/or houses during the development and construction period, provided such signs are approved by the ACC. This restriction shall not apply to the permanent subdivision sign to be erected on entrance lots.

6.12 Aesthetics. Nature Growth. Screening. Underground Utility Service. Trees which have a diameter in excess of six inches (6") measured two feet (2') above ground level, and distinctive flora, shall not be intentionally destroyed or removed except with the prior approval, in writing, of the ACC. Clotheslines, garbage cans and equipment, shall be screened to conceal them from view of neighboring Lots and streets. All fuel tanks must be buried.

6.13 Antennae. No radio, television transmission, television satellite dish, or reception towers or antennae shall be erected on any Lot, or elsewhere in the Development, other than customary antennae which do not exceed ten feet (10') in height above the roof-ridge line of any house. Any exceptions must be reviewed and approved in writing in advance by the ACC.

6.14 Trailers. Trucks. School Buses. Boats. Boat Trailers. No house trailers or mobile homes, or other habitable motor vehicles of any kind, school buses, trucks, or commercial vehicles over one (1) ton capacity, shall be kept stored or parked overnight either on any street or on any Lot, except within enclosed garages. Pleasure boats or boat trailers and campers only up to twenty-eight (28) feet must be kept in the rear yard, but must not be lived in.

6.15 Mailboxes. All mailboxes shall be of a similar style approved by the ACC.

6.16 Clotheslines. All clotheslines, garbage cans, and woodpiles shall be screened and shall not be

visible from street.

6.17 Swimming Pools. All above ground swimming pools, hot tubs, and spas must be approved by the ACC.

6.18 Exterior Sculpture. Exterior sculpture, birdbaths, fountains, flags, and similar items must be approved by the ACC. No artificial vegetation shall be allowed on the exterior of any Lot.

6.19 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators, or other equipment for the storage or disposal of such material, shall be kept in a clean and sanitary condition. If such litter or other materials is found on any Lot, the same will be removed by the Lot owner of such Lot, at the Lot owner's expense, upon written request of the ACC.

6.20 Changing Elevations. No Lot owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade or surrounding Lots, unless approved in writing by the ACC.

6.21 Sewage System. Sewage disposal shall be through municipal system or type approved by appropriate State agencies.

6.22 Water System. Water shall be supplied through municipal system or type approved by appropriate State agencies.

6.23 Utility Facilities. Developer reserves the right, in its sole and exclusive discretion, to approve the necessary construction, installation and maintenance of utility facilities, including, but not limited to water, telephone and sewerage systems, which may be at variance with certain of the provisions of this Declaration.

6.24 Model Homes. Declarant, as well as any approved builder of homes in the Development, shall have the right to construct and maintain model homes on any of the Lots, subject to the prior approval of the ACC

6.25 Easements. Lots subjected to this Declaration shall be subject to those easements, if any, shown as set forth on any recorded plat thereof. Also, easements for installation and maintenance of utilities and drainage facilities are hereby reserved, to the extent shown on the Plat over each side line of each Lot and over the rear of each Lot subjected to this Declaration. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except of those improvements for which a public authority or utility company is responsible.

6.26 Driveways and Entrances to Garages. All driveways and entrances to garages shall be constructed of concrete or a substance approved in writing by the ACC and of a uniform quality.

6.27 Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Development shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Development, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing

of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Development. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devised as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of an Lot unless required by law.

Any recreational vehicle or motor home stored in the Development for periods longer than twenty-four (24) hours shall be considered a nuisance and may be removed from the Development.

6.28 Unsightly or Unkempt Conditions. 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 not be pursued or undertaken in any part of the Development.

6.29 Guns. The discharge of firearms in the Development is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and small firearms of all types.

6.30 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

## ARTICLE VII

### EASEMENTS. ZONING AND OTHER RESTRICTIONS

#### 7.01 Easements.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

(i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television and other utilities and similar facilities;

(ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;

(iii) slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature;

(v) the erection, installation, construction and maintenance offences, walls, monuments, signs, etc. along streets in, around and along and at entrances to the Development, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature; and

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

**7.02 Easement Area.** The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto.

**7.03 Entry.** The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this Article. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 8.01.

**7.04 Zoning and Private Restrictions.** None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

## ARTICLE VIII

### ENFORCEMENT

**8.01 Right of Enforcement.** This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association and (iii) each Owner, his legal representatives, heirs, successors and assigns.

#### **8.02 Right of Abatement.**

(a) Except where different notice provisions are provided elsewhere in these Restrictions, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in these Restrictions, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by law or 10% to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contrary, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 4.01

hereof and (iii) all deed to secure debt given to secure a loan the proceeds of which are used (1) to purchase a lot or lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

8.03 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

#### 8.04 Collection of Assessments and Enforcement of Lien.

(a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney To sell the said Lot or Lots subject to lien at auction, at the usual place for conducting sales at the Courthouse in Gwinnett County, Georgia, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriffs advertisements for Gwinnett County, Georgia are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen per centum of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

8.05 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

## ARTICLE IX

### DURATION AND AMENDMENT

#### 9.01 Duration and Perpetuities.

(a) The provisions of these covenants shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. Provided, however, so long as Georgia law limits to twenty (20) years, the period during which covenants restricting lands to certain uses may run, any provision of these Covenants affected thereby shall run with and bind the land for a period of twenty (20) years from the date these Covenants are filed for record in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia, after which time such provision shall be automatically extended, if permitted by law, for successive periods often (10) years, unless an instrument, signed by at least seventy-five (75%) percent of the then Owners of record and the holders of first mortgages on their Lots has been recorded in the Office of the Clerk of said Court, agreeing to terminate or change such provisions in whole or in part. Every purchaser or grantee of any interest in any portion of the Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the provisions of these Covenants may be extended and renewed as provided in this section.

(b) If any of the covenants, conditions, restrictions, easements or other provisions of these Covenants shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Her Majesty Queen Elizabeth II, the Queen of England.

9.02 Amendment. These Covenants may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Covenants, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to these Covenants, or (iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private mortgage insurance company to insure mortgage loans on the Lots subject to these Covenants; provided any such amendment shall not adversely affect the title to any Owner's Lot, unless any such Owner so affected thereby shall consent thereto in writing. These Covenants may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any real property subject to these Covenants; and provided further, however, no amendment affecting the Declarant's right to add additional property shall be effective unless also signed by Declarant. No amendment to the provisions of these Covenants shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to these Covenants, by acceptance of a deed

or other conveyance therefor, thereby agrees that these Covenants may be amended as provided in this Section.

## ARTICLE X

### ANNEXATION

10.01 Submission of Additional Property. Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Section 10.02 of this Article, to submit all or portions of the Additional Property to this Declaration and thereby to cause the Additional Property, or such portions thereof, to become part of the Property. This option may be exercised by the Declarant in accordance with the conditions and limitations set out in Section 10.02 of this Article, which are the only conditions and limitations on such right.

10.02 Conditions of Annexation. Any Annexation as permitted in Section 10.01 of this Article shall be in accordance with the following terms and conditions:

(a) The option to submit portions of the Additional Property may be exercised at any time and from time to time until seven (7) years from the date this Declaration is recorded; provided, however, that the Owners of Lots to which two-thirds of the Class A votes in the Association appertain, exclusive of any vote or votes appurtenant to Lots then owned by Declarant, may consent to the extension of such option by vote taken not more than one (1) year prior to the date upon which such option will expire.

(b) The legal description of the Additional Property is set forth in Exhibit "B" portions of the Property may be added at different times, and there are no limitations fixing the boundaries of those portions or regulating the order in which an such portions may become part of the Property.

(c) All Lots created on portions of the Additional Property which are added to the Property will be restricted exclusively to residential use, in accordance with Article VI of this Declaration.

(d) The option reserved by Section 10.01 of this Article may be exercised by the Declarant alone (without the consent of the Association or any Owner) by the execution by the Declarant of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of Forsyth County, Georgia, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located therein, and an identifying number for each such Lot. Any such amendment shall expressly submit that portion of the Additional Property which is to become part of the Property from time to time, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation. Following recording of the plat, Declarant shall convey the Common Property shown thereon to the Association by limited warranty deed, subject to matters of record.

(e) From and after the date of annexation of any portion of the Additional Property, each Lot so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges accorded every other Lot previously comprising part of the Property. Upon annexation of each portion of the Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owners, the covenants to maintain the Common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of the Additional Property which is then the subject of annexation.

(f) It is understood that if the Development is approved for funding of individual Lot loans by the Federal Housing Administration and/or the Veterans Administration, any variance from the plan of Annexation initially approved by them may jeopardize future funding unless such variance is approved prior to implementation.

(g) Each Owner, by acceptance of a deed to a Lot in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article X.

## ARTICLE XI

### MISCELLANEOUS

11.01 Other Changes. Notwithstanding any other provisions herein which may be construed to the contrary, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or owners (other than the Declarant) of the individual Lots in the Development have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property owned, directly or indirectly, by such Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common area or property by the Association shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of dwellings on the Lots of the Development, the exterior maintenance of Lots and improvements thereon, the maintenance of the Common Property or party walks or common fences or common roadways and driveways, or the upkeep of lawns and plantings in the Development.

(d) fail to maintain fire and extended coverage on insurable Association Common Property, if any, on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value (based on current replacement cost);

(e) use hazard insurance proceeds for losses to any Association Common Property for other than the repair, replacement or reconstruction of such property.

#### 11.02 Rights of First Mortgagees.

(a) First mortgagees of Lots in the Development may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Association's Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Despite any other provision of this Declaration which may be interpreted otherwise, it is expressly intended that no Owner or any other party have priority over any rights of the first mortgagee of a Lot pursuant to its mortgage or security deed in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Association Common Property.

(b) In addition to the rights of mortgagees elsewhere provided, each first mortgagee of a

Lot, upon request, shall (i) be entitled to attend and observe all meetings of Owners, but not meetings of the Board; (ii) be furnished copies of annual financial reports made to the Owners; and (iii) be entitled to inspect the financial books and records of the Association during reasonable business hours.

**11.03 Professional Management.** Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice.

**11.04 Notice of Lease and Tenants and Guests.** All tenants; lessees, guests and visitors are subject to the covenants contained in this Declaration, and they must abide by the rules and regulations set forth herein and as promulgated by the Association. It is the responsibility of the Owner to inform his tenants, lessees, guests and visitors of this requirement. It is also the responsibility of the Owner to inform the Association of any lease of his dwelling, whether by written or oral agreement, and where the Owner will not be occupying his dwelling to provide the Association with a forwarding address where he may be contacted.

**11.05 No Reverter.** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

**11.06 Severability.** A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof

**11.07 Headings.** The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

**11.08 Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

**11.09 Notices.** All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

(a) Declarant: Yost Communities, Inc.  
3280 Pointe Parkway  
Suite 2400  
Norcross, Georgia 30092

(b) Owner: Each Owner's address as  
registered with the Association  
in accordance with the By-Laws.

Any written communication transmitted in accordance with this Section 11.09 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

**11.10 No Liability.** Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

11.11 Approval by HUD/VA. Notwithstanding any provision to the contrary contained in (i) this Declaration, (ii) the Articles of Incorporation of the Association, or (iii) the By-Laws of the Association, so long as there shall be a Class B Member, the Secretary of Veterans Affairs and the Secretary of Housing and Urban Development, or their respective designees, shall have the right of prior approval of (a) dedication of Common Property, (b) the amendment of this Declaration or the Articles of Incorporation of the Association, (c) the merger, consolidation or dissolution of the Association, or (d) the conveyance or mortgaging of the Common Property.

11.12 Voluntary Dissolution. Notwithstanding any provision of this Declaration to the contrary, the Association shall not be voluntarily dissolved without the prior consent and approval of the Board of Commissioners of Forsyth County, Georgia.

11.13 By-Laws. The initial By-Laws of the Association are attached hereto as Exhibit "C".

11.14 The Association shall have the obligation to (i) timely and fully pay all ad valorem real property taxes and assessments hereafter levied or assessed against the Common Property and Open Space, and (ii) maintain such casualty, liability or other insurance coverage as the Board deems necessary and to pay all premiums thereon as and when the same shall become due and payable.

11.15. The Association shall assume all of the obligations of Declarant under (i) that certain Outdoor Lighting Service agreement between Declarant and Georgia Power Company, dated November 3, 2003, relating to Sienna Subdivision-Phase 1, and (ii) that certain Outdoor Lighting Service agreement between Declarant and Georgia Power Company, dated November 3, 2003, relating to Sienna Subdivision-Phase 2,

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed and sealed this 7<sup>th</sup> day of November, 2003.

Signed, sealed and delivered  
in the presence of:

J. Neal Under  
Witness

Quayle McNeil  
Notary Public

YOST COMMUNITIES, INC., a Georgia  
corporation

By: John R. Yost  
JOHN R. YOST, President

Notary Public, DeKalb County, Georgia  
My Commission Expires Dec. 11, 2004

## EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 14 of the 2<sup>nd</sup> District, 1<sup>st</sup> Section, and in Land Lots 1201, 1247, 1248, 1273 and 1274 of the 3<sup>rd</sup> District, 1<sup>st</sup> Section, of Forsyth County, Georgia, and being more particularly described as follows:

**BEGINNING** at a 1 1/8 inch open top pipe found at the corner common to Land Lots 1202, 1203, 1246 and 1247 of the 3<sup>rd</sup> District, 1<sup>st</sup> Section of said County; running thence north 89 degrees 28 minutes 31 seconds east along the northerly line of Land Lot 1247, 1,419.72 feet to a rock found at the corner common to Land Lots 1201, 1202, 1247 and 1248, said District and Section; running thence north 89 degrees 00 minutes 11 seconds east along the northerly line of Land Lot 1248, 242.24 feet to a #5 iron pin found at the southeasterly corner of Lot 45, Hickory Ridge Subdivision; thence leaving said Land Lot line and running north 16 degrees 45 minutes 34 seconds east along the southeasterly line of said Lot 45, 190.22 feet to a point located on the southerly right-of-way line of the cul-de-sac of Hickory Oak Hollow (a 60-foot right-of-way and 60-foot radius); running thence northeasterly along the southeasterly right-of-way line of the cul-de-sac of Hickory Oak Hollow and following the arc of a curve to the left (said arc having a radius of 60.00 feet and being subtended by a chord line having a bearing of north 67 degrees 53 minutes 08 seconds east and a chord length of 75.31 feet), an arc distance of 81.41 feet to a point; running thence north 88 degrees 11 minutes 36 seconds east along the southerly right-of-way line of Hickory Oak Hollow 58.70 feet to a point located at the northwesterly corner of Lot 47, said Subdivision; running thence south 01 degree 00 minutes 44 seconds east along the westerly line of said Lot 47, 209.12 feet to a point located on the northerly line of Land Lot 1248; running thence north 89 degrees 00 minutes 11 seconds east along the northerly line of Land Lot 1248, 788.65 feet to a #3 iron pin found; thence leaving said Land Lot line and running south 28 degrees 35 minutes 19 seconds west, along the northwesterly line of property now or formerly owned by Marcus Mashburn, Sr., 1,406.87 feet to a 1/2 inch open top pipe found at the northwesterly corner of property now or formerly owned by Timothy and Sherry Gravitt; running thence south 26 degrees 55 minutes 05 seconds west, along the northwesterly line of said Gravitt Property, 170.69 feet to a point located at the northwesterly corner of Lot 13, Pine Forest Acres Subdivision, Section 2, as per plat thereof recorded in Plat Book 8, page 37, Forsyth County, Georgia records; running thence southwesterly along the northwesterly lines of Lots 13, 12, 11, and 10, said Subdivision, Section and Plat, the following courses and distances: south 11 degrees 24 minutes 12 seconds west, 181.76 feet to a point; south 13 degrees 24 minutes 00 seconds west, 123.74 feet to a point; and, south 08 degrees 19 minutes 55 seconds west, 122.32 feet to a point located at the northeasterly corner of Lot 37, Pine Forest Acres Subdivision, Section 1, as per plat thereof recorded in Plat Book 1, page 213, aforesaid records; running thence south 88 degrees 33 minutes 13 seconds west, along the northerly lines of Lots 37, 36, and 35, said last mentioned Subdivision, Section and Plat, 377.70 feet to a 1/2 inch open top pipe found on the northeasterly line of property now or formerly owned by Dona Hodges; running thence north 15 degrees 40 minutes 44 seconds west along the northeasterly line of said Hodges Property, 117.34 feet to a 1/2 inch crimp top pipe found at a corner of said Hodges Property; running thence south 89 degrees 26 minutes 52 seconds west, along the northerly line of said Hodges Property, 273.34 feet to a 1/2 inch crimp top pipe found; running thence south 53 degrees 07 minutes 44 seconds west along the northwesterly line of said Hodges Property, 273.86 feet to a 1/2 inch crimp top pipe found; running thence south 53 degrees 12 minutes 53 seconds west 200.0 feet to a 1/2 rod found; running thence south 36 degrees 33 minutes 10 seconds east, along the southwesterly line of said Hodges Property, 298.52 feet to a point; running thence south 02 degrees 48 minutes 15 seconds east, along the westerly line of said Hodges Property, 346.52 feet to a 1/2 inch crimp top pipe found on the northerly right-of-way line of Kelly Mill Road (an 80-foot right-of-way); running thence westerly and northwesterly along the northerly and northeasterly right-of-way line of Kelly Mill Road, and following the curvature thereof, the following courses and distances: along the arc of a curve to the left (said arc having a radius of 759.28 feet and being subtended by a chord line having a bearing of south 85 degrees 04 minutes 07 seconds west and a length of 102.77 feet), an arc distance of 102.85 feet to a point; south 81 degrees 11 minutes 17 seconds west, 187.66 feet to a point; along the arc of a curve to the right (said arc having a radius of 375.17 feet and being subtended by a chord line having a bearing of north 80 degrees 35 minutes 24 seconds west and a length of 234.63 feet), an arc distance of 238.63 feet to a point; along the arc of a curve to the right (said arc having a radius of 375.17 feet and being subtended by a chord line having a bearing of north 59 degrees 00 minutes 37 seconds west

and a length of 43.95 feet), an arc distance of 43.97 feet to a point; north 52 degrees 42 minutes 37 seconds west, 88.15 feet to a point; along the arc of a curve to the right (said arc having a radius of 736.57 feet and being subtended by a chord line having a bearing of north 36 degrees 08 minutes 40 seconds west and a chord length of 211.94 feet), an arc distance of 212.68 feet to a point; north 30 degrees 06 minutes 58 seconds west, 184.67 feet to a point; and, along the arc of a curve to the left (said arc having a radius of 211.15 feet and being subtended by a chord line having a bearing of north 43 degrees 09 minutes 38 seconds west and a length of 111.32 feet), an arc distance of 112.65 feet to a point located at the southeasterly corner of property now or formerly owned by Richard Scott and Amy Louise Fields; thence leaving the northeasterly right-of-way line of Kelly Mill Road and running north 00 degrees 27 minutes 36 seconds west along the easterly line of said Fields Property, along the easterly line of property now or formerly owned by Joel Webb Family Limited Partnership and along the easterly lines of Lots 5 and 4, Green Valley Subdivision, a distance of 2,053.27 feet to the 1 1/8 inch open top pipe found at the corner common to Land Lots 1202, 1203, 1246 and 1247, which pipe marks the **POINT OF BEGINNING**; and being a tract or parcel of land containing, in the aggregate, 101.718 acres designated as "Tract 1" (containing 95.599 acres), "Tract 2" (containing 0.700 acre), and "Tract 3" (containing 5.420 acres), according to a plat of survey prepared for Yost Communities, Inc. by Landmark Design Associates, bearing the seal and certification of R. Dale Rambo, Georgia Registered Land Surveyor No. 2811, dated June 28, 2002.

EXHIBIT "B"

Any and all real property located in Forsyth County, Georgia.