

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR**

THE SUMMIT AT SCARBOROUGH SUBDIVISION

UNIT ONE

THIS DECLARATION is made this 29th day of February, 2000 by **Zenith Development Corp.**, a Georgia corporation (hereinafter called the "Developer");

WITNESSETH:

WHEREAS, Developer owns all of the property known as **THE SUMMIT AT SCARBOROUGH SUBDIVISION, UNIT ONE**, as shown on that certain plat of survey recorded in Plat Book 30, Page 216, Henry County, Georgia Records (the "Subdivision"), which plat is incorporated herein by reference thereto for a more complete description of the Subdivision.

WHEREAS, Developer has subdivided said property into Lots identified as "Summit at Scarborough" Subdivision, Unit One, as evidenced by the above-referenced Plat, and plans to develop the property as a residential community of single-family detached dwellings; and

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values in the Subdivision and for the maintenance of the Subdivision and the improvements thereon, and to this end desires to subject the Subdivision to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values in the Subdivision, to create an "Architectural Control Committee" (hereinafter "ACC"), hereinafter defined and empowered. The ACC will be delegated and assigned the powers of administering and enforcing the covenants, conditions, and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has deemed it desirable; for the purpose of performing certain functions or enabling certain functions to be performed for the good and general welfare of other owners of Lots in THE SUMMIT AT SCARBOROUGH Subdivision, to create a "Summit at Scarborough Homeowner's Association" (the "Association"), for the purpose of exercising such functions, hereinafter defined and empowered; and

WHEREAS, Developer intends that every Owner (as hereinafter defined) of a Residential Unit (as hereinafter defined) which is made subject to this Declaration does automatically and by reason of such ownership, and by reason of this Declaration, become a member of the Association and subject to its valid rules and regulations and subject to the assessment by the Association pursuant hereto; and

WHEREAS, it is in interest, benefit, and advantage of Developer and each and every person who shall hereafter become an owner that certain protective covenants

governing and regulations the use and occupancy of the Subdivision be established, set forth and declared to be covenants running with the land; and

WHEREAS, Developer and any and all owners or owner governed by the Georgia property Owners' Association Act (O.C.G.A. Section 4-3-220 through Section 44-3-235).

NOW, THEREFORE, the Developer declares that the properties which are made subject to this Declaration pursuant to Article 2 hereof and shall be held, transferred, sold, mortgaged, leased, conveyed, used and occupied subject to the covenants, restrictions, easements, assessments charges, and liens hereinafter set forth, all of which are for the purpose of enhancing and protection the value, desirability, and attractiveness of such property. Such Covenants and Restrictions are and shall be binding on all parties having and acquiring any right, title or interest in such property or any part thereof and shall insure to the benefit of each Owner thereof. These Covenants shall be binding on all persons claiming under and through the Developer until (20) years from and after the date of this instrument, at which time such covenants may be extended in accordance with O.C.G.A. Section 44-5-60(b) as hereinafter provided.

Article 1 **DEFINITIONS**

The following terms when used in this Declaration (unless the Context shall clearly indicate to the contrary), shall have the following meaning:

1.1 "Architectural Control Committee" (hereinafter "ACC") shall mean and refer to Zenith Development Corporation, or such other individual (s) as Developer may appoint, or such entity to which the Architectural Control Committee may assign its duties, until all Lots in the Subdivision shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents. At such time as all of the Lots in the Subdivision have been fully developed, permanent improvements constructed thereon, and sold to permanent residents, the Developer shall notify the Association and all the Owners of Lots in the Subdivision to that effect, at which time the Developer's rights and obligations as the Architectural Control Committee shall forthwith terminate. Notice to the Association and all the Owners by Developer under this provision shall be in writing. After receipt of said notice from the Developer, the Association shall have the right, power, and authority to elect a successor Architectural Control Committee which shall consists of not less than two (2) Owners of lots. The rules and regulations pursuant to which such Architectural Control Committee shall act shall be prescribed by the Association. Upon the sale of One Hundred Percent (100%) of the Lots in Summit of Scarborough to homeowners, the ACC and its duties shall merge with the Homeowner's association for the duration of these Protective Covenants. Notwithstanding the foregoing, the Developer may, in its sole discretion, relinquish control over the Architectural Control Committee at any time prior to completion and sale of all Lots in the Subdivision by so notifying the Association and the Owners of Lots in the Subdivision as set forth hereinabove.

1.2 “Association” shall mean and refer to the summit at Scarborough Homeowner’s Association. Notwithstanding any other provisions hereof, the Developer shall be solely responsible for the administration of the Association until such time as title to eighty percent (80%) of all Lots have been conveyed to homeowners. Until such time, the duties and powers of the Association, including those of the Board of Association, shall be performed by and vested in the Developer or a person employed by the Developer on behalf of the Association, unless sooner relinquish by amendment hereto executed by the Developer and recorded in Henry County, Georgia records. Notwithstanding the foregoing, the Developer may, in its sole discretion, relinquish control over the dues of the Association at any time prior to completion and sale of all Lots in the Subdivision by so notifying the Owners of Lots in the Subdivision as set forth hereinabove.

1.3 “Covenants and Restrictions or Declaration” shall mean and refer to all covenants, restrictions, easements and charges and liens set for the in this Declaration.

1.4 “Developer” shall mean Zenith Development Corp.

1.5 “Owner” shall mean and refer to any Person (as hereinafter defined) who is or shall be a record owner by purchase, transfer, assignment of foreclosure of a fee or undivided fee interest in a Residential Unit (as hereinafter defined) in portion of the Restricted Property (as hereinafter defined); provided, however, that any person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

1.6 “Person” shall mean and refer to any natural person, corporation, partnership, limited partnership, joint venture association or any such entity.

1.7 “Restricted Property” shall mean and refer to all real property as set forth in Article 2 of this Declaration.

1.8 “Residential Units” shall mean and refer to each single family detached house and/or each single Lot of subdivided property intended for a single family detached house or any other equivalent form of residential building.

1.9 “Common Property” shall mean any and all real and personal property, including, without limitation, entrance areas, easements and other interests therein, and the improvements located thereon, now or hereafter owned by the Developer or the Association for the common use and enjoyment of the Owners.

1.10 “Lot” shall mean any plot of land within the Subdivision, whether or not the improvements are constructed thereon which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded in the land records of the county where the subdivision is located. The ownership of each Lot should include, and there shall pass with the title to each Lot shall include, and there shall pass with the title to each Lot as an appurtenance thereto, whether or nor separately described, all of the rights and interest of an Owner in the Common Property, as herein provided, together with the membership in the Association.

1.11 “Mortgagee” shall mean the holder of a Mortgagee on any Lot.

1.12 “Supplementary Declaration” shall mean an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.13 “Supplementary Property” shall mean any adjacent property now owned by the Developer or purchased by the Developer in the future that the Developer desires to include as a new phase or unit of this Subdivision at a later date.

ARTICLE 2

PROPERTY SUBJECT TO DECLARATION; EFFECT THEREOF

2.1 Property Hereby Subjected to This Declaration. This Declaration is hereby imposed upon the following described real property, which shall hereinafter be held, transferred, sold, conveyed, used, leased occupied and mortgaged or otherwise encumbered subject to this Declaration.

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 227 of the 12th District of Henry County, Georgia, being shown on a Plat of Survey prepared by Leonidas Burton Sears III, Georgia RLS No. 2628, dated 2/25/2000, and recorded on 3/21/00 in Plat Book 30, Page 216, Henry County, Georgia records, which plat is incorporated herein by reference for a more complete metes and bounds description of the property.

2.2 Unilateral Annexation by Developer. As the owner of thereof, Developer shall have unilateral right, privilege, and option from time to time at any time ten (10) years after the recording of this Declaration to subject all or any portion of any real property of any real property adjacent to the lands described in paragraph 2.1 herein now owned by the Developer or purchased by the Developer in the future; and by this reference incorporated herein, to the provisions of this “Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. If any land is not subjected to this Declaration, Developer’s reserved rights shall not impose any obligation on Developer to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Developer or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

ARTICLE 3

HOMEOWNER’S ASSOCIATION FORMATION, MEMBERSHIP AND VOTING RIGHTS

3.1 Formation and Administration of the Association. Notwithstanding any other provisions hereof, the Developer shall be solely responsible for the administration of the Association until such time as title to eighty percent (80%) of all Lots have been conveyed to homeowners. Until such time, the duties and powers of the Association, including those of the Board of Directors of the Association, shall be performed by and vested in the Developer or a person employed by the Developer on behalf of the

Association, unless sooner relinquished by amendment hereto executed by the Developer and recorded in Henry County, Georgia records. At such time that eighty percent (80%) of the Lots have been conveyed to homeowners. The Developer shall appoint a committee of not less than three (3) homeowners. These homeowners will then be responsible for the notification of all other Owners of a specially called meeting, which shall be the initial meeting of the Summit at Scarborough Homeowner's Association. The purpose of this meeting will be to hold an election for officers, who shall serve for the remainder of the calendar year in which said initial meeting is held. These meetings shall subsequently be held each year, on approximately May 1st to re-elect officers who shall serve for one year. The developer shall transfer all unexpended assessments held by the Developer to the Association at the time of this initial meeting and election.

3.2 Membership. Every person who is an Owner is and shall be a member of the Association; provided, however, that any Person who owns such interest merely as security for the performance of an obligation shall not be a member of the Association.

3.3 Classes of Membership; Voting Rights. There shall be two (2) classes of membership in the Association.

(a) Each Owner of a Lot, with the exception of the Developer, shall be a Class A member and shall be entitled to one (1) Class A vote per Lot. Where such owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the Secretary of the Association.

(b) The Developer shall be the sole Class B member and shall be entitled to three (3) votes for each Lot owned; provided, however, in no event shall the Class B member have less than the total number of votes plus one (1). The Class B membership shall cease and be converted to a Class A membership at such time as the first of the following events occur: (a) September 23, 2008; (b) the date as of which seventy-five percent (75%) of the Lots which may be developed on the Restricted Property shall have been conveyed to an individual owner or owners for residential occupancy; or (c) the surrender, in writing, by Developer of the authority to appoint and remove members of the Board of Directors. If at the termination of the Class B membership, Developer still owns any Lots, then as to each Lot owned by Developer, Developer shall be a Class A member.

(c) The Subdivision will be composed of Lots to be developed in phases containing unequal numbers of lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court of Henry County in accordance with Article 2 of this Declaration. The Developer shall notify the Association in writing when the final phase of the Subdivision has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Developer of the subdivision plats covering such phases, the total votes of outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with formula set forth in subsection (b) of this Section 3.3 and in no event shall Class B

membership cease and can be converted to Class A membership (as provided in subsection (b) of this Section 3.3) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate the Developer to develop any proposed phase of the Subdivision unless such phase is subjected to this Declaration.

3.4 Suspension of Membership Rights. The membership rights of any member, including the right to vote, may be suspended by the Association's Board of Directors pursuant to authority granted in the Association's Bylaws, as amended from time to time. Any such suspension shall not affect such members' obligations to pay assessments past due or coming due during the period of suspension and shall not affect the permanent charge and lien on the members' property in favor of the Association.

3.5 Meetings of the Membership. All matters concerning meetings of members of the Association, including the time and manner in which notice of any of said meetings shall be given to members or the quorum and percentage vote required for the transaction of business of any meetings, shall be specified in this Declaration, in the Bylaws of the Association, as amended from time to time, or by law.

3.6 Authority of Association: The Developer, and its' successor, the Association shall have the authority to enforce the terms and conditions of these Covenants. In addition, the individual property owners of Lots in said subdivision shall have the right to enforce these Covenants. In any event, the Developer shall not be obligated to enforce these Covenants as set forth herein after divesting itself of ownership of at least eighty percent (80%) of the Lots in the property described herein to homeowners.

3.7 Duties of Maintenance of any Common Areas: The Association's maintenance of entrance areas and any other common areas subsequently designated by Developer shall be performed consistent with the standards set out herein for the owners of all Lots.

ARTICLE 4

COMMON PROPERTY

4.1 Easements for Use and Enjoyment. Every Owner shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the occupants of the Owner's Lot in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

(a) the right of the Association to suspend the voting rights of an Owner for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(b) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds of the Lots (other than

Developer) and the consent of Developer, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of rights, interests, opinions, easements, and privileges herein reserved or established for the benefit of Developer or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Subdivision (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Developer or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Subdivision);

(c) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property to government entities, any quasi-governmental agency or to any utility company or cable television company.

(d) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds of the Lots (other than Developer) and the Developer;

(e) all other rights of the Association, the Developer, Owners and occupants set forth in this Declaration or in any deed conveying Common Property to the Association; and

(f) all encumbrances and other matters shown by the public records affecting title to the Common Property.

ARTICLE 5 **ASSESSMENTS**

5.1 Creation of the Lien or Personal Obligation for Assessments. Each Class A member, by acceptance of a deed or other conveyance for any Residential Unit in the Restricted Property, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agree to pay the Association.

(a) **Initial and Annual assessments** and charges; and

(b) Special assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments, together with the late charges, simple interest at the rate of twelve percent (12%) per annum, court costs, and attorneys' fees incurred to enforce or collect such assessments, shall be an equitable charge and a continuing lien upon the property against which each such assessment is made and shall also be the personal obligation of the person who is the record owner of the property at the time the assessment fell due.

5.2 Purpose of Assessment. The assessments levied under this Article 5 shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members and their tenants and, in particular, for the maintenance of the landscaped entrance area or areas (the "Entrance Areas") of the Summit at Scarborough Subdivision and any subsequent phase thereof created out of the Supplemental Property or an portion thereof, including, but not limited to, the payment of taxes and insurance thereon and repair, and regular maintenance. Such portion of the annual assessments levied by the Association under this Article 5 as may be necessary for such purposes shall be devoted to promoting the recreation, health, safety and welfare of the member and establishing and maintaining reserves for the maintenance of entrance area or areas.

5.3 Initiation Dues and Annual Assessments.

(a) The Initiation Dues for Class A members shall be two hundred fifty dollars (\$150.00) per Lot. This amount shall be made payable at the time of Lot purchase by a Class A member to either (a) the Developer, until such time that the Association has been formed; or (b) the Association, after the formation of same. This payment shall not be pro-rated; and

(b) The annual assessment of Class A members shall be two hundred and fifty dollars (\$250.00) per Lot. This amount shall be made payable at the time of Lot purchase by a Class A member to either (a) the Developer, until such time that the Association has been formed; or (b) the Association, after the formation of same. The first annual assessment payable to the Association with respect to a Residential Unit shall be adjusted according to the number of days remaining in the calendar year following the date a member becomes a member.

(c) Subsequent annual dues shall be payable in the amount of two hundred and fifty dollars (\$250.00) per Lot, and shall be due on the 1st day of May each year.

(d) The Class B members shall pay whatever amount, if any, in excess of the Class A members' assessment as, in the sole opinion of the Class B member, may be necessary to maintain and manage (and only to maintain and manage, including the payment of ad valorem taxes) the entrance area and any other areas of common responsibility.

(e) From and after such time as the Class A member shall be entitled to full voting privileges and in accordance with Article 3 of this Declaration, the annual assessment shall be determined by the Board of Directors of the Association without regard to the maximum annual assessment imposed prior to such time and shall be paid by all the members; provided, however, that any assessment after the initial assessment set by the Board of Directors of the Association shall not be increased (or decreased) in any one year by an amount in excess of twenty percent (20%) of the assessment for the year immediately prior to the year for which the increase (or decrease) is to be effective. The Board of Directors of the Association shall set the annual assessment at less than the maximum allowed pursuant to this Section.

5.4 Equality of Assessment Among Residential Units. No Residential Unit within the Restricted Property shall bear a higher assessment than any other Residential Unit within the Restricted Property except that, until such time as the Class A members shall be entitled to full voting privilege in accordance with Article 3 of this Declaration, the Class B members may bear a greater or lesser assessment burden than Class A members while the Class B members may be subsidizing the Association with this obligation pursuant to Section 5.3.

5.5 Date of Commencement of Annual Assessments; Due Dates.

(a) The Association's Board of Directors shall send written notice of the annual assessment and the amount of such assessment to every member subject thereto at least twenty-one (21) days in advance of each annual assessment. Unless otherwise provided by the Association's Board of Directors, the entire amount of the annual assessment for each Residential Unit shall become due and payable to the Association without further notice from the Association; provided, however, that in the event the Board of Directors shall fail to send written notice of the annual assessment to members at least twenty-one (21) days prior to the annual assessment period the payment for the annual assessment shall not be due until twenty-one (21) days after such notice is given; the failure to notify twenty-one (21) days prior to the annual assessment period shall not, however, reduce the amount of the assessment due and payable.

(b) The Association shall, upon demand at any time, furnish to any member liable for any assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

5.6 Effect of Nonpayment of Assessment: the Personal Obligation; the Lien; Remedies of the Association

a) If an assessment is not paid on or before the date when due, then such assessment become delinquent and, together with such interest thereon and the cost of the collection thereof, shall become a continuing lien on the delinquent member's or member's property which shall bind such property in the hands of the then owner, his heirs, designees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then owner to pay such assessments shall remain his personal obligation and shall also pass to his successors in title. Such owners shall nevertheless remain as fully obligated as before to pay immediately preceding the transfer; and such owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding, any agreement between such owners and successors in the title creating an indemnification of the owner or any relationship of principal and surety as between themselves.

b) If assessment is not paid within thirty (30) days after the due date, such assessment shall bear interest from the date of the delinquency at the lesser of the highest rate permitted by law or twelve percent (12%) per annum, and the Association may bring legal action against the owner personally obligated to pay the same or foreclose its lien against such owner's property, in which event, interests, costs and attorneys' fees equal to ten percent (10%) of the principal amount shall be added to the amount of such assessment as may then be due. Each owner, by acceptance of a deed or other conveyance of his or her property, invests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of such charges as a debt and to foreclose the aforesaid lien in an appropriate proceeding and lower equity. The lien provided for in this Article 5 shall be in favor of the Association and shall be for the benefit of all members. The Association shall not waive any liens or rights it may have against any member or such member's Residential Unit without the approval of holders of eighty percent (80%) or more of the vote of those then entitled to vote all classes of membership.

5.7 Subordination of Charges and Liens to Mortgages: The lien specified shall be in favor of the Developer or the Association and shall be superior to all other liens and encumbrances on such Lot, except for:

- (a) Lien for property taxes due, or
- (b) Any unpaid First Mortgage created by any Lot Owner duly recorded in the records of Henry County, Georgia.
- (c) Any unpaid valid First Mortgage created by any Developer duly recorded in the record of Henry County, Georgia.

5.8 Purpose of Subordination: Such subordination shall not relieve the owner of the mortgaged property of his personal obligation to pay all assessments and charges coming due at any time when he is the owner of such property; shall not relieve such property from the liens and permanent charges provided for herein (except to the extent a subordinated lien or permanent charge is extinguished as a result of subordination as against a mortgage or such a mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the mortgagee or to any other person pursuant to a decree of foreclosure or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous owner of such property of any personal obligation or relieve such property or the then owner of such property from liability for any assessment or charges authorized hereunder become due after such sale and transfer.

5.9 After-Acquired Title: All other persons or entities acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to have consented that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances. Each owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right to bring all actions against each owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in this Declaration shall be in favor of the Association and shall be in favor of the Association and shall be for the benefit of

all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, mortgage, or convey the same.

ARTICLE 6 **ADMINISTRATION**

6.1 Responsibility for Administration. The administration of the Association, the maintenance, repair, and operation of the Entrance Areas shall be the responsibility of the Association.

6.2 Management and Maintenance Agreement. The Association may enter into such management and maintenance agreements as are necessary or desirable for the administration and maintenance of the Entrance Areas. Any management agreement which is to be entered into, after approval by a majority of the Board of Directors, shall provide for the compensation to be paid, the term thereof, which shall exceed one year, and the manner in which and the terms upon which such agreement may be terminated, which shall include the right of termination thirty (30) days after fifty-one percent (51%) of the members then entitled to affirmatively vote, to so terminate such contract at any time after the Class A members are entitled to the full voting privileges in accordance with Article 3.

6.3 Limitations of Liability; Indemnification. Notwithstanding the duties of the Association to maintain the Entrance Areas, the Association shall not be liable for injury or damage caused by the latent conditions nor for injury caused by the elements, members or other persons; nor shall any officer or director in performance of the duties hereunder, unless due to willful misfeasance or malfeasance or gross negligence of such officer or director. Each officer and director of the Association shall be indemnified by the members against all expense and liabilities, including attorneys' fees reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association, and any settlement, whether or not he is an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer and director are adjudged guilty of willful misfeasance or malfeasance or gross negligence in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors and the Association approves of such settlement and reimbursement as being for and in the best interest of the Association.

ARTICLE 7 **INSURANCE**

7.1 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of Individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or, damage by fire and other hazards commonly insured an "all-risk"

policy, if reasonably available including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expenses of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot as a specific assessment.

7.2 Damage and Destruction – Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days; they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction, in the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article 8, Sections 8, 1 and 8.4(2) of this Declaration.

7.3 Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

ARTICLE 8 **GENERAL PROVISIONS**

8.1 Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land, shall be and remain in effect, and shall insure to the benefit of and be enforceable by the Association or the owners of any of the Restricted Property, their respective heirs, legal representatives, successors and assigns, for a term of 20 years from the day of the recording of this Declaration. Upon the expiration of said 20-year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of 10-year periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each 10 year renewal period for an additional 10 year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial 20-year period or the last year of any 10-year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the requisite number of votes are obtained in order to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the records of the Clerk of the Superior Court of Henry County, Georgia, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any of the restricted property by acceptance of a deed or other conveyance

thereof, thereby agrees that the Covenants and Restrictions of this Declaration may be renewed and extended as provided herein.

8.2 Notices. Any notice required or permitted to be sent to any member pursuant to any provision of this Declaration may be served by depositing such notice in the mail, postage prepaid, addressed to the member or owner to whom it is intended at his last known place of residence, or to such other address as may be furnished to the secretary of the Association, and such service shall be deemed sufficient. The date of service shall be the date of mailing.

8.3 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or any property shall be prohibited or held invalid, such prohibition or invalidity shall not effect any other provision or the application of any provision which can be given effect without the invalid revision or application, and to this end, the provisions of this Declaration are declared to be severable.

8.4 Protective Covenants.

(a) Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling unit not to exceed three (3) stories in height.

(b) Architectural Control. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and plans showing location of the structure have been approved by the Architectural Control Committee, as described in Section 8.4(0) below, as to quality of workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finished grade elevation. No fence or walls shall be erected, placed or altered on any Lot nearer to any street than the minimum building set-back line, unless similarly approved. Approval shall be obtained as provided in Section 8.4(0) below.

(c) Dwelling, Cost, Quality and Size. No dwelling shall be permitted on any Lot at a cost of less than one hundred fifty thousand dollars (\$150,000.00), including the price of the lot, based upon cost levels prevailing on the date this instrument is recorded, it being the intention and purpose of this covenant to assure that all dwellings shall be of the quality of workmanship and materials substantially the same or better than that which can be produced on the date this instrument is recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, of ranch-style houses shall not be less than one thousand five hundred (1,500) square feet for a one-story dwelling, nor less than two thousand (2,000) square feet for a dwelling of more than one story.

(d) Building Location. No building shall be located on any Lot nearer to the front line of the Lot or nearer to the side street line than the minimum

building set-back lines shown on the plat. In any event, no building shall be located on any Lot nearer than twenty (20) feet to the front line of the Lot, or nearer than ten (10) feet to any side street line. No building shall be located nearer than ten (10) feet to an interior line of a Lot, except that a ten (10)-foot side yard shall be required for a garage or other permitted accessory building located ten (10) feet or more from the minimum building set-back line. No dwelling shall be located on an interior Lot nearer than thirty (30) feet from the rear line of the Lot. For the purposes of this covenant, caves, steps, carports and open porches shall not be constructed to permit any portion of a building on a Lot to encroach upon another Lot.

(e) Lot Area and Width. No dwelling shall be erected or placed on any Lot having a width of less than fifty (50) feet at the minimum building set-back line nor shall any dwelling be erected or placed on any Lot having an area of less than twelve thousand (12,000) square feet.

(f) Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat and over the rear ten (10) feet of each Lot. Drainage flow shall not be obstructed nor diverted from drainage or utility easements as designated above or on the recorded plat.

(g) Nuisances. No noxious or offensive activities shall be carried on or upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the Subdivision neighborhood. No basketball goal may be set-up or utilized in the streets.

(h) Temporary Structures. No structure of a temporary character, trailer, mobile home, basement, tent, storage building, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

(i) Signs. No sign of any kind shall be displayed to the public view on any Lot except for one (1) sign of not more than sixteen (16) square feet advertising such Lot for sale or rent or one (1) additional sign used by a builder to advertise the Lot during the construction and sales period or to advertise an established model home; provided, however, this prohibition shall not apply to signs as may be required by legal proceedings, county ordinance, or directional sign; for vehicular or pedestrian safety in accordance with plans and specifications approved by the Architectural Control Committee; and such sign as are used to identify and advertise the Subject Property.

(j) Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

(k) Pets, Livestock and Poultry. 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 purposes. No pet shall be under leash or voice control at all times when walked or exercised outside of all fenced area; on each Lot.

(l) Garbage and Refuse Disposal. No Lot shall used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All containers, incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, free of odor. Noxious or offensive activities shall not be carried on in any Lot and each Owner, his family, tenants, guests, invitees, servants, and agents shall refrain from any act or use of a Lot which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other portions of the Subdivision or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, use or placed within the Subdivision.

(m) Sewerage Disposal. No individual sewerage-disposal system shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards, and recommendations of the

Georgia Department of Public Health. Approval of such systems as installed shall be obtained from the appropriate governmental authorities.

(n) Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and ten (10) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points four (4) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within one hundred (100) feet from the intersection of a street property line with the edge of a driveway pavement of such Lot. No tree shall be maintained at a sufficient height to prevent obstruction of such sight lines.

(o) Architectural Control. The majority of the Architectural Control Committee may designate a representative to act for it. In the event of the death or registration of any member of the Architectural Control Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Architectural Control Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this instrument. The approval or disapproval of the Architectural Control Committee as required by this instrument shall be in writing. In the event the Architectural Control Committee, or its designated representative, fails to approve or disapprove plans and specifications within thirty (30) days after such plan specifications shall have been submitted to it, then approval of the Architectural Control Committee shall be deemed to have been given and compliance with the related covenants shall be deemed to have been made.

(p) Building Restrictions. All structures and other improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. The enclosed, heating floor area of all one-story residences shall contain not less than one thousand five hundred (1,500) square feet for ranch-style house, and the enclosed, heated floor area of all two-story residences shall contain not less than two thousand (2000) square feet. Identical mail boxes, approved by the Architectural Control Committee, shall be installed by each builder by builder's expense.

(q) Use of Lots and Dwelling. Each Lot shall be used for residential purposes only and no trade or business of any kind may be carried on therein. The use of a portion of the residence as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic, or otherwise create a nuisance. The use of a residence or a portion thereof for business meetings, entertainment or the enjoyment or business of the Owner's employees, trustees, agents, clients, or customers shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic or otherwise create a nuisance. Notwithstanding the provision, it shall be expressly permissible for Developer, any builder of homes and their respective agents, employees, successors and assigns to maintain and carry on within the Subdivision such

facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement and sale of Lots, including, without limitation, the installation and operation of sales and construction trailers and offices, signs, and model residences.

(r) Antennas. No television antenna, radio receiver, satellite dish or other similar device shall be attached to or installed on any portion of the Subdivision, unless contained entirely within the interior of a building or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Subdivision; provided, however, that Developer and the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio or other similar systems, and should cable television services be unavailable, and adequate television reception not be otherwise available, then an Owner may make written application to the Architectural Control Committee for permission to install a television antenna.

(s) Motor, Vehicles, Trailers, Boats, Etc. All automobiles owned or used by Owners or other than temporary guests and visitors shall be parked in garages to the extent that garage space is available, and garages shall not be used for storage or otherwise so that they become unavailable for parking cars therein. The Association shall have the authority to promulgate rules and regulations to govern or prohibit the outside storage or parking upon any Lot of any mobile home, trailer, motor home, tractor, truck (other than pick-up trucks), commercial vehicles or any type, camper, motorized camper or trailer, boat or other water craft, boat trailer, motorcycle, motorized bicycle or any other similar devices from being kept, placed, stored, maintained or operated upon any portion of the Subdivision, if in the opinion of the Board of Directors of the Association such prohibition shall be in the best interests of the Subdivision. No Owners or other occupants of any portion shall be in the best interests of the Subdivision. No Owners or other occupants of any portion of any portion of the Property shall repair or restore any vehicle of any kind upon or within any Lot except: (i) within enclosed garages or workshops; or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(t) Fences. No fence or wall of any kind shall be erected, maintained or altered on any Lot by any Owner than Developer, without the prior written approval of the Architectural Control Committee.

(u) Garage Sales. All garage sales shall be conducted in accordance with applicable laws and such rules and regulations as may be established by the Association from time to time.

(v) Clotheslines. No outside clothes shall be constructed, placed or maintained on any Lot without approval of the Architectural Control Committee.

(w) Exterior Structures. No artificial vegetation, exterior sculptures, fountains or similar items shall be constructed, placed, or maintained on any Lot without the prior written approval of the Architectural Control Committee.

(x) Construction of Improvements. Construction of all dwellings on a Lot shall be completed within eighteen (18) months of the commencement date of said construction. If any dwelling on a Lot is not completed within eighteen (18) months of the commencement date of said construction, the Association, its employees and agents, shall have the right, but not the obligation, to enter upon said Lot and to take such action as is necessary to complete construction of said dwelling, with the costs thereof being assessed against the Owner of such Lot. Such Owner shall be personally liable to the Association for the direct and indirect costs of completion of said dwelling, and the liability for such costs shall constitute an equitable charge and continuing lien upon the Lot enforceable by the Association shall give notice to the Owner of such Lot prior to commencing any work, as set forth 8.2 and the provisions thereof and shall be applicable with respect to the foregoing.

(y) 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, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the more restrictive provision shall govern and control.

(z) Enforcement. Enforcement of the covenants contained in this instrument shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages.

8.5 Amendment. This Declaration may be amended as provided in Section 44-3-226 of the Georgia Property Owners' Association Act, as amended from time to time.

8.6 Class A Control. Any reference in the Declaration to the time that the Class A members shall be entitled to full voting privileges shall mean the date of termination of the Class B membership pursuant to Section 3.3.

8.7 Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of the Georgia Property Owners' Act. O.C.G.A. Section 44-3-220 et seq. shall prevail.

ARTICLE 9

MORTGAGEE PROVISIONS

9.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the Subdivision or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however,

notwithstanding this provision, any holder of a first Mortgage, upon request , is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within 90 days of the date of the request.

9.3 No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officers and the appropriate corporate seals affixed hereto, the day and year first above written.

ZENITH DEVELOPMENT CORP.

Witness our hands and seals
This 29th day of February, 2000

BY: _____

Milton C. Foster, CEO

Unofficial Witness

BY: _____

Douglas W. Cotter, Jr. CFO

Notary Public