

Geiger, Swords & Caudill  
1351 Riverstone Parkway  
Suite 120  
Canton, GA 30114

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DECLARATION re: IRIS PARK SUBDIVISION AND  
IRIS PARK HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION is made this 11TH day of DECEMBER, 2006 by  
**GEIGER, SWORDS, & SHEA, LLC.** (hereinafter called the "Developer");

WITNESSETH

WHEREAS, Developer owns all of the property known as IRIS PARK Subdivision as shown on that certain  
plat of survey recorded in Plat Book 91 at page 173-176, Cherokee County, Georgia Records  
(The "Subject Property"); and

WHEREAS, Developer desires to provide for the benefit of all of the residents of the Subjected Property, certain  
community areas (as hereinafter defined); and

WHEREAS, Developer deems it desirable to create the Association (as hereinafter defined) to own, maintain and  
administer the community areas, the improvements that may be located thereon, and the entrance area, (hereinafter  
collectively the "Community Areas") in accordance with the Covenants and Restrictions as hereinafter provided  
and to insure the enjoyment and maintenance of such Community Areas by such residents; 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;

NOW THEREFORE, the Developer declares that the properties which are made subject to this Declaration  
pursuant to Article 2 hereof are and shall be held transferred, sold, conveyed and occupied subject to the  
**Covenants and Restrictions hereinafter set forth**, all of which are for the purpose of enhancing and protecting  
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 hereof and shall inure to  
the benefit of each Owner.

## ARTICLE 1

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

- (a) "Association" shall mean and refer to IRIS PARK HOMEOWNERS ASSOCIATION, INC., a nonprofit corporation organized and existing under the laws of the State of Georgia.
- (b) "Covenants and Restrictions" shall mean and refer to all covenants, restrictions, easements, charges and liens set forth in this Declaration.
- (c) "Developer" shall mean GEIGER, SWORDS, & SHEA, LLC., its successors and/or assigns.
- (d) "Development Documents" shall mean and refer to the Articles of Incorporation and By-Laws of the Association as may be amended from time to time.
- (e) "Manager" shall mean and refer to any person with whom the Association contracts for the administration and operation of the Community Areas.
- (f) "Mortgage" shall mean and refer to any security instrument by means of which title to the Community Areas is conveyed or encumbered to secure a debt, including, without limiting the generality of the foregoing, security deeds, deeds to secure debt, mortgages and deeds of trust.
- (g) "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 a 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.
- (h) "Person" shall mean and refer to any natural person, corporation partnership, limited partnership, limited liability company, joint venture association, or any other such entity.
- (i) "Community Areas" shall mean and refer to the property described on the plat of survey as "Community Area," "Common Area," "Park," or "Open Space," and shall include but not be limited to areas designated for entrance, cul-de-sacs, parks, amenities, and walking trails.
- (j) "Recreational Purposes" shall mean and include activities such as picnicking and engaging in sporting activities, walking, and such other activities as may be delineated by the Board of Directors of the Association from time to time.
- (k) "Restricted Property" shall mean and refer to all real property as set forth in Article 2 of this Declaration and any additional real property added to the jurisdiction of the Association pursuant to Article 2, Section 2 of this Declaration.
- (l) "Residential Units" shall mean and refer to each single family detached house, an attached townhome, each single lot of subdivided property intended for a single family detached house or attached townhome, or any other equivalent form of residential building.

(m) "Residential Building Lot" shall mean any lot so designated on the plat of survey of the restricted property which is to accommodate a Residential Unit.

## **ARTICLE 2**

Property Subject to Declaration; Effect Thereof.

### **Section 1. Property hereby subjected to this Declaration.**

This Declaration is hereby imposed upon the following described real property and the Developer hereby subjects the following described property to this Declaration, which shall hereafter be held, transferred, sold, conveyed, used, leased, occupied and mortgaged or otherwise encumbered subject to this Declaration:

All those tracts or parcels of land lying and being in Land Lots 161, 163, and 164 of the 14th District, 2nd Section, of the City of Canton and Cherokee County, Georgia, and being Lot \_\_\_\_\_ through and including Lot \_\_\_\_\_ of Iris Park Subdivision, and the areas herein designated "Open Space", all as per the plat of survey recorded in Plat Book \_\_\_\_\_ at page \_\_\_\_\_, Cherokee County, Georgia records.

### **Section 2. All Restricted Property bears the burden, and enjoys the benefits, of this Declaration.**

Every person who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in any portion of the Restricted Property or later added Restricted Property does agree and shall be deemed by reason of taking such record title to agree to all of the terms and provisions of this Declaration.

## **ARTICLE 3**

### **The Community Association; Automatic Membership and Voting Rights Therein.**

#### **Section 1. The Association.**

The Developer has caused or will cause to be formed and incorporated under the laws of the State of Georgia Iris Park Homeowners Association, Inc., a nonprofit Georgia Corporation.

#### **Section 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.

### Section 3. Classes of Membership; Voting Rights.

The Association shall have two classes of membership; Class A and Class B.

- (a) Class A. Class A members shall be those persons holding an interest required for membership as specified in Section 2 of this Article 3 with the exception of the Developer. Class A membership shall be a nonvoting membership except on such matters and in such events as hereinafter specified. Class A members shall not be entitled to full voting privileges until:

- (i) Such time as the Class B members shall so designate by notice in writing delivered to the Association, or

- (ii) On \_\_\_\_\_, whichever shall first occur.

Before the earlier of these events, the Class A members shall be entitled to vote only on:

- (i) Any proposal or change of method of calculating the maximum amount of the annual assessment delivered by the Association;
- (ii) Any proposal that is a special assessment levied by the Association, except as otherwise specifically herein provided;
- (iii) Any proposal not to maintain, repair or reconstruct any damage or destruction to the Community Areas Property and the facilities thereon;
- (iv) Any proposal to dedicate, transfer or sell all or any part of the Community Areas Property;
- (v) Any proposal of merger, consolidation or dissolution;
- (vi) Any proposal to amend this Declaration of the Articles of Incorporation of the Association; and
- (vii) Any other matter for which it is herein specifically provided that approval of all classes of membership is required.

When entitled to vote, Class A members shall be entitled to one vote for each Residential Unit in which they hold any interest required for membership under Section 2 of this Article 3. When more than one person holds an interest or interest in a Residential Unit, the vote for such Residential Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Residential Unit. In the event of a disagreement among such persons, and an attempt by two or more persons to cast a vote for such Residential Unit, such vote shall not be recognized.

Class B. The Developer shall be the sole Class B member. Class B membership shall be full voting membership, and, during its existence, the Class B member shall be entitled to vote on all matters and all events. The Class B member shall be entitled to one vote for each Residential Unit or Residential Building Lot in which it holds any interest. At such time as the Class A members shall be entitled to full voting privileges, the Class B membership shall automatically terminate and cease to exist, in which event the Class B member shall be and become a Class A member insofar as it may then hold any interest required for membership in Section 2 of this Article 3. From and after the date on which the Class B membership shall terminate in accordance with this Article 3 and cease to exist, such membership shall not be revived. Voting rights for the

ownership of a Residential Building Lot shall be solely vested in the Developer.

#### **Section 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 By-Laws, as amended from time to time. Any such suspension shall not effect such members obligations to pay assessments past due or coming due during the period of suspension and shall not effect the permanent charge and lien on the members property in favor of the Association.

#### **Section 5. Meetings of the Membership.**

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

### **ARTICLE 4**

#### **Section 1. The Common Area Property; Members Rights in the Community Area Property.**

The Developer hereby covenants with the Association to convey the Community Area property to the Association on or prior to \_\_\_\_\_.

#### **Section 2. Members Easements of Enjoyment.**

Subject to the provisions contained in (a) through (h) of this Section, every member of the Association shall have a right in the easement of enjoyment in and to the Community Areas including, but not limited to, the nonexclusive right of ingress and egress and nonexclusive right to use the Community Areas for Recreational Purposes and such easement shall be appurtenant to and shall pass with the title to all portions of the Restricted Property. The Community Areas shall be used only for Recreational Purposes and entrance areas as designated by the Association. Rights and easements of enjoyment created hereby shall be subject to:

- (a) The right of the Developer or its designees to the exclusive use of such portion of the Community Areas as it, in the exercise of its sole discretion, may deem necessary or advisable, for, or as may be reasonably required, convenient or incidental to, the construction of improvements within the Restricted Property and Community Areas, and the sale of property contained in the Restricted Property. In addition, Developer, at its sole expense, covenants to construct in the Community Areas, on or before December 31, 2005, certain amenities and such landscaping and enhancements as Developer, in its sole discretion, deems appropriate. Developer shall also install street lighting at such locations as may be deemed appropriate by the Developer. Such discretionary right of the Developer shall and does exist notwithstanding any provision in this Declaration which might be construed to the contrary, and such right of the Developer exists without affecting any member's obligation to pay assessment coming due and without affecting the permanent charge and lien on any member's property in favor of the Association.

(b) The right of the Association (if holders of ninety percent (90%) or more of the vote of those then entitled to vote of all classes of membership authorized, and subject to applicable zoning ordinances) to borrow money for the purpose of improving the Community Areas and in aid thereof to mortgage or otherwise burden or encumber the Community Areas. The Association shall not mortgage any portion of the Community Areas which may provide ingress and egress to any Residential Unit. In the event of a default upon any such mortgage or other burden or encumbrance, the lender shall then only have the right,

(i) To take possession of such Community Areas (where such right of possession exists),

(ii) To charge admission or other fees as a condition to continued enjoyment by the members and

(iii) If necessary, to open the enjoyment of the Community Areas to persons other than members until the mortgage or other debt is satisfied, such right being the exclusive remedy available to the lender; and at the time such mortgage or other debt is satisfied the title to and possession of the Community Areas shall be returned to the Association, all rights or persons other than members shall terminate and all rights of members hereunder shall be fully restored; and

(c) The right of the Association to take such steps as are reasonably necessary to protect the Community Areas against foreclosure; and

(d) The right of the Association, as provided by its By-Laws, to suspend the enjoyment of rights of any member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published rules and regulations; and

(e) The right of the Association to charge reasonable admission and other fees for the use of any facilities which may be constructed upon the Community Areas; and

(f) The right of the Association to grant such easements and rights of way to such utility companies or public agencies or authorities as it may deem necessary or desirable for the proper servicing and maintenance of the Community Areas.

### **Section 3. Extension of Rights and Benefits.**

Every member of the Association shall have the right to extend the rights and easements of enjoyment vested in him under this Article 4 to each of his tenants and to each member of his family who resides with him on Restricted Property and to other persons as may be permitted by the Association's By Laws or Board of Directors.

## **ARTICLE 5**

### **Assessment**

#### **Section 1. Creation of the lien or personal obligation for assessments.**

Each Class A member, by acceptance of a deed or other conveyance of 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 with and agree to pay the Association: (a) 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 such interests thereon and cost of collection thereof as hereinafter provided shall be a charge on the land, shall be 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.

#### **Section 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 servicing, improvement and maintenance of the Community Areas and facilities related thereto, devoted to such purposes and related to the use and enjoyment of the Community Areas, and for the maintenance of the landscaped entrance area or areas (the "Entrance Areas") of Iris Park Subdivision and any subsequent phase thereof created out of any additional property that may be later included in the Iris Park master plan, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. 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 members and their tenants and establishing and maintaining reserves for the maintenance, repair, replacement and operation of the Community Areas and facilities, street lighting, and the entrance area or areas.

#### **Section 3. Basis and Maximums of Annual Assessments.**

Until such time as the Class A member shall be entitled to full voting privileges in accordance with Article 3 of this Declaration:

- (a) The maximum initial annual assessment of Class A members shall be Three Hundred Fifty and 00/100 dollars, (\$350.00), per year per residential unit payable to the Association, and
- (b) Each owner shall pay a one time membership fee of Four Hundred and 00/100 dollars, (\$400.00), which shall be due and payable on the date the owner closes on the purchase of a residential unit.
- (c.) 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 Community Areas, and maintain the street lighting.

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 the Association shall not be increased (or decreased) in any one year by an amount in excess of ten percent (10%) 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 may set the annual assessment at less than the maximum allowed pursuant to this Section.

#### **Section 4. Special Assessments.**

Upon the affirmative vote of the holders of seventy five percent (75%) or more of the vote of those then entitled to vote of all classes of membership of the Association, the Association may levy and collect a specific special assessment so authorized for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected repair or replacement of a capital improvement upon the Community Areas and street lighting, including any necessary fixtures or personal property related thereto; or for the purpose of increasing the annual assessment by an amount in excess of what is authorized by Section 3 of this Article.

#### **Section 5. 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 member may be subsidizing the Association with this obligation pursuant to Section 3 of this Article.

#### **Section 6. 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 thirty (30) 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 on the 1st day of November of each year and shall be paid 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 thirty (30) days prior to the annual assessment period the payment for the annual assessment shall not be due until thirty (30) days after such notice is given; the failure to notify thirty (30) days prior to the annual assessment period shall not however reduce the amount of the assessment due and payable.

The annual assessment shall be established on a calendar year basis and shall commence as to each member when he becomes a member pursuant to Section 2 of Article 3. 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.

(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.



**Section 7. Effective 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 shall become delinquent and shall, together with such interest thereon and the cost of the collection thereof if hereinafter, thereupon become a continuing lien on the delinquent members' 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 to the Association any and all amounts which he was obligated 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 title creating any indemnification of the owner or any relationship of principal and surety as between themselves.

(b) If the 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, interest, costs and attorney's fees equal to fifteen percent (15%) 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 other members. The Association acting on behalf of the other members shall have the power to bid in the owners' property at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No member may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Community Areas and facilities. The Association shall not waive any liens or rights it may have against any member or such members Residential Unit without the approval of holders of ninety percent (90%) or more of the vote of those then entitled to vote all classes of membership.

(d) If the assessment is not paid within thirty (30) days after the due date, the Association may also suspend the membership rights of the delinquent member, including the right to vote, the right of enjoyment in and to the Community Areas and facilities and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments due during the period of such suspension and shall not effect the permanent charge and lien on such members property in favor of the Association.

**Section 8. Subordination of Charges and Liens to Mortgages.**

(a) The liens and permanent charges of all assessments and charges authorized herein (annual, special or otherwise) with respect to any restrictive property is hereby made subordinate to the lien of any first mortgage placed on such property if, but only if, all assessments and charges with respect to such property authorized herein having a due date on or prior to the date of the mortgage as filed of record have been paid. The liens and permanent charges hereby subordinated are only such liens or charges as relate to assessments and charges authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgage property pursuant to any proceeding in lieu of

foreclosure or the sale or transfer of the mortgage property pursuant to a sale under power contained in such mortgage.

(b) Such subordination is merely a subordination and 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 such subordination as against a mortgagee or such 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.

## **ARTICLE 6**

### **Architectural Control**

#### **Section 1. Architectural Control Committee: Creation and Composition**

(a.) An Architectural Control Committee (ACC) shall be established consisting of not fewer than three members and no more than five members, provided that the ACC shall have an odd number of members. Each member shall serve for a period of one year and may be reappointed by the Developer. The unanimous action of two or more members, or the majority action of three or more members shall be binding upon the ACC and any applicant. Notwithstanding anything to the contrary, all members of the ACC shall be appointed by the Developer until the first to occur of: (i.) December 31, 2010; (ii) until every lot is conveyed by Developer to a party who are not successors or assigns of Developer; or: (iii) until voluntary surrender in writing by Developer of its right to appoint such membership. Any member of the ACC may be removed at any time with or without cause by the Developer. All costs of operating the ACC shall be paid by the Association.

#### **Section 2. Powers and Duties of the ACC:**

The purpose of the ACC is to assure that any installation, construction, or alteration of any structure on any lot shall be submitted to the ACC for approval as to whether the proposed installation, construction or alteration is in conformity with the existing standards of the development. The ACC shall promulgate Design Standards which shall assure the conformity and harmony of external design and general quality of the development, shall govern the form and content of plans and specifications, the submission of plans, the guidelines with respect to approval or disapproval of features, styles, colors, materials, location, size of structures and any other matters deemed appropriate to the ACC. The ACC shall make a published copy of the Design Standards readily available to members of the Association and all applicants seeking the ACC's approval. The function of the ACC shall be to deal with aesthetic issues and not to act as a building inspector.

### **Section 3. Obligation to Act**

The ACC shall take action on any plans and specification submitted to it within twenty (20) days after receipt of the plans. Approval or disapproval of the plans, together with any conditions imposed by the ACC shall be placed in writing on the plans and returned to the applicant. Failure of the ACC to take action on the submitted plans shall be deemed approval of such plans and specifications. The ACC, or any agent of the Association, may, without committing a trespass, and after reasonable notice, and at any reasonable time or from time to time, enter onto any Lot and Structure for the purpose of ascertaining whether the installation, construction, alteration, or maintenance of the structure conforms to the approved plans and is in compliance with this Declaration. Violations of the requirements of the ACC or other provisions of this Declaration may be enforced by the Association as a breach of a contractual obligation, and subject the offending party to the remedies granted the Association elsewhere in this Declaration or as appropriate under Georgia law.

## **ARTICLE 7**

### **General Covenants and Restrictions**

#### **Section 1. Application**

The Covenants and Restrictions in this Article 7 shall pertain and apply to all lots and structures erected or placed thereon.

#### **Section 2. Restriction on Use**

Lots designated herein may be used for single family residences only and for no other purposes provided that Developer may operate a Sales Office and/or Model Homes on a lot or lots designated by Developer. The Developer reserves the right to designate other property currently under the Iris Park Master Plan as "Townhome" lots and subject the same to the terms and conditions of this Declaration.

#### **Section 3. Resubdivision of the Property**

No lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split division or subdivision.

#### **Section 4. Erosion Control**

No activity which may create erosion or siltation problems shall be undertaken on any lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscapes and required landscaping as provided for in elsewhere in these covenants. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

#### **Section 5. Landscaping**

No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the construction or alteration of any Structure shall be included in the Design Standards of the ACC.

#### **Section 6. Trees**

No tree shall be removed from any lot unless such removal is in conformity with approved landscaping plans and specifications and the City of Canton tree protection plan ordinance.

#### **Section 7. Temporary Buildings**

No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any lot.

#### **Section 8. Signs**

No signs whatsoever (including but not limited to commercial or similar signs) shall, without prior approval of the ACC, be installed, altered, or maintained on any lot, or on any portion of a structure visible from the exterior thereof, except: (a.) such signs as may be required by legal proceedings; (b.) not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of four square feet, provided however that any such signs made available by the Association must be used; or (c.) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC.

#### **Section 9. Setbacks**

In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC and shall be consistent with any such setbacks shown on recorded plats of any portion or all of the Property. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

#### **Section 10. 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 or walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC.

#### **Section 11. Roads and Driveways**

No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design, location and alterations of roads and driveways may be included in the Design Standards of the ACC.

#### **Section 12. Antennae**

No exterior television or radio antennae, including satellite television signal receiving equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written approval by the ACC. No antennae shall be installed or used for the purpose of transmitting electronic signals.

#### **Section 13. Swimming Pools**

No swimming pool shall be constructed on any Lot without the prior written approval of the ACC of plans and specifications for such swimming pools. No above ground swimming pools shall be placed on any Lot. Guidelines relating to the design and location of swimming pools may be included in the Design Standards of the ACC.

#### **Section 14. Clotheslines, Garbage Cans, etc.**

All equipment, garbage cans, woodpiles, etc. shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets. No clotheslines shall be placed on any Lot.

#### **Section 15. Maintenance**

Each owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting or other appropriate external care of all Structures; (ii) the seeding, sodding, watering and mowing of all lawns; (iii) the mulching of all planting areas with approved mulch listed in the Design Standards; and (iv) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. If, in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, then the Association shall have the Right of Abatement as provided in this Declaration. Guidelines relating to maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

#### **Section 16. Recreational Vehicles, Trailers, and Commercial Vehicles**

No house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed (a) seven (7) consecutive days, or (b) twenty-five (25) total days in any calendar year. Owners may park sport utility vehicles, two-axle pickup trucks, and domestic vans on the driveway of a Lot so long as none of said vehicles display any advertising or identify any business. No other trucks, vans or commercial vehicles may be parked anywhere on a Lot or in the street in front of any Dwelling. The only place an authorized vehicle may be parked on a Lot is on a driveway or concrete parking area on the Lot.

#### **Section 17. Recreational Equipment**

Recreational and playground equipment shall be placed or installed only upon the rear of a Lot, except that basketball goals, backboards and poles may be placed or installed other than upon the rear of a Lot provided they are painted and maintained in accordance with the Design Standards. All recreational and playground equipment shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets.

#### **Section 18. Walking Trail and Common Area Activities**

All walking trail and common area activities shall be governed and regulated by the Association, which shall also promulgate rules regarding the times of permitted use, landscaping of the trails, improvements, and other criteria for the enjoyment of the trails and common areas.

#### **Section 19. Animals and Pets**

No animals, livestock or poultry of any kind shall be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets, in reasonable number and of a gentle breed, provided that such pets are not kept, bred, or maintained for any commercial purpose, are not permitted to roam free, and in the sole discretion of the Association, do not endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the owners of other Lots or the owner of any property located adjacent to the Development. Such discretion by the Association shall include limitations as to the breed of the animal. No animal shall be kept on any Lot that has been cited as a "dangerous animal" by any governmental jurisdiction. All structures for the care, housing, or confinement of any pets shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets.

#### **Section 20. Solid Wastes**

No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property. Except during approved construction, no person shall burn rubbish, garbage or any other form of solid waste on any Lot or on Common Property. Except for building materials employed during the course of construction of any structure approved by the ACC, no lumber, metals, bulk materials, or solid wastes of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards. If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular basis and recurring basis, containers may be placed in the open on any day that pick-up is to be made. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers, the manner of storage, and the place of pick-up may also be included in the Design Standards.

#### **Section 21. Nuisances**

No noxious or offensive activity shall be carried on upon any Lot so as to render any portion unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Development. Noxious or offensive activities shall not be carried on in any Lot or in any part of the Community areas, and each Owner, his family, tenants, visitors, guests, servants, and agents, shall refrain from any act or use of a Lot or of the Community Areas which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other Lots, or which could result

in a cancellation of any insurance of any Lot or any portion of the Community Areas, 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 devices used exclusively for security purposes, shall be located, used, or placed within the Development.

#### **Section 22. Criminal Background / Sex Offender Background Check**

The Association shall have the right to approve all contracts submitted for the sale or lease of any residence located in Iris Park. Such approval by the Association shall be a condition precedent to performance by the seller and shall be a condition that cannot be waived by the seller. Such approval by the Association shall be contingent upon the completion of a criminal background check, as determined by the Association, of all adult persons contracting for the purchase or lease of a residence in Iris Park subdivision, or residing in such residence. At the time of submission of a contract to purchase or lease by a prospective purchaser or tenant to or from an owner of a residence in Iris Park, and prior to acceptance of the contract by the owner/seller, the prospective purchaser or tenant agrees to provide to the Association such personal information deemed sufficient by the Association to obtain a Criminal Background/Sex Offender background check of all such persons. In the event that the background check reveals the existence of a criminal history, defined by the information received, as sufficient to identify the person as a "sex offender," or having committed a "sex offense," whether or not that person is in compliance with local, state, or federal sex offender registration laws, the contract shall be rejected by the Association and shall not be accepted by the owner/seller of the property. In the event that the owner/seller accepts such contract without the submission and approval of the Association, the property of the owner/seller shall be assessed by the Association the sum of One Thousand Dollars (\$1000.00) per day for each day the contract remains pending, through and subsequent to the closing of such contract, until such background check is completed. In the event the subsequent background check discloses a "sex offense" as defined herein, such assessment shall be a continuing lien against the property. In the event that any person residing in Iris Park is arrested for a defined "sex offense" the property on which that person resides or holds an ownership or leasehold interest, shall be subjected to a One Thousand Dollar and 00/100 (\$1000.00) per day assessment for each day in which such person resides in the residence. The Association reserves the right to immediately enforce all available remedies under this Declaration, including the immediate suspension of common area and amenity use privileges to such person.

#### **Section 23. Notice to Tenants, Lessees, and Guests**

All tenants, lessees, and guests are subject to the Covenants contained in this Declaration and must abide by the rules and regulations set forth herein. Any failure of a lessee to fully comply with the terms and conditions of such documents shall constitute a default by the Owner. Leasing by an Owner shall not relieve an Owner from his obligations hereunder. In the event of a violation of this Declaration by tenants, lessees, or guests, the Association shall notify the Owner as well as the tenant of such violation.

## **ARTICLE 8**

### **EASEMENTS, ZONING, AND OTHER RESTRICTIONS**

#### **Section 1. Easements**

Developer hereby expressly reserves to Developer, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Developer for any purpose which Developer deems necessary, including by way of example, and limitation, the following:

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 cables, and other utilities and similar facilities; - 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; slope control purposes, including the right to grade and plant slopes and 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; the planting or replanting of hedges, shrubbery, bushes, trees, flowers and plants of any nature, and; walking trail access and recreational use for portions of the Property which adjoins the walking trails.

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

#### **Section 2. Easement Area**

The words "Easement Area" as used herein shall mean those areas on any Lot, Property, or Common Property with respect to which easements are shown on a recorded deed or on any filed or recorded map or plat relating thereto, and specifically created hereby. Developer hereby specifically reserves for itself, its successors and assigns, an easement over and across all roads and right of ways shown on any plat filed of record for the purpose of installation, construction, alteration, and maintenance of sewer lines, pipes and equipment serving the Property.

#### **Section 3. Entry**

Developer hereby reserves for itself and its employees, agents, successors, and assigns, an easement over and across each Easement Area, together with 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. Developer and its employees, agents, successors and assigns shall be responsible for leaving such Lot, Property, or Community Property in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Article 8 Section 1.



#### **Section 4. 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.

#### **Administration**

##### **Section 1. Responsibility for Administration.**

The administration of the Association, the maintenance, repair, and operation of the Community Areas and street lighting facilities and the Entrance Areas shall be the responsibility of the Association.

##### **Section 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 Community Areas and street lighting facilities and the Entrance Areas.

In the event the Association shall determine to place improvements on the Community Areas pursuant to this Declaration and enters into a management agreement for the operation of such facilities and improvements, the manager of the Community Areas shall exercise all the powers and shall be responsible for the performance of all the duties of the Association, except those powers and duties specifically and exclusively assigned to the officers directly from members of the Association by this Declaration. 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 not exceed one year, in 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 seventy-five percent (75%) of the members then entitled to vote 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.

##### **Section 3. Limitations of Liability; Indemnification.**

Notwithstanding the duties of the Association to maintain and operate the Community Areas, street lighting, and to maintain the Entrance Areas, the Association shall not be liable for injury or damage caused by the latent condition of the Community Areas nor for injury caused by the elements, members or other persons; nor shall any officer or director of the Association be liable to any person for injury or damage by such officer or director in performance of this 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 expenses and liabilities, including attorney's 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 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 is 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 9**

### **Insurance and Casualty Losses**

#### **Section 1. Insurance.**

The Board of Directors of the Association or its duly authorized agent shall have the authority to and shall obtain insurance for all improvements on the recreation portions of the Community Areas against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, in amounts sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard and shall also obtain a public liability policy covering the recreation portion of the Community Areas and all damage or injury caused by negligence of the Association or any of its agents. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association and all such policies shall be written by accompanied license to do business in the State of Georgia and holding a "A" or better by Best's Insurance Report or a similar publication, and all policy shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear.

## **ARTICLE 10**

### **General Provisions.**

#### **Section 1. Duration.**

The Covenants and Restrictions of this Declaration shall run with and bind the land, shall be and remain in effect, and shall inure to the benefit of and be enforceable by the Association or the owners of any of the Restricted Property, their respective legal representatives, as successors and assigns, for a term of 20 years from the day and year first above written. Said Covenants and Restrictions may be renewed and extended, in whole or in part, beyond said 20 year period for successive periods not to exceed 20 years each if an agreement for renewal and extension is signed by members of the Association then entitled to cast at least fifty-one percent (51%) of the votes of the Association and has been filed for record in the Office of the Clerk of the Superior Court of Cherokee County, Georgia, at least thirty (30) days prior to the effective date of such renewal and extension; provided, however, that each such agreement shall specify which of the Covenants and Restrictions are so renewed and extended and the term for which they are renewed and extended. 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.

#### **Section 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 mails, 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.

**Section 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 affect 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.

**Section 4. Amendment.**

The Covenants and Restrictions of this Declaration may be amended by an instrument signed by members of the Association then entitled to cast at least ninety percent (90%) of the votes of each class of members of the Association; provided, however, that any such amendment of these Covenants and Restrictions must be in full compliance with all applicable laws and regulations, including the zoning ordinances applicable to the Restricted Property and any covenants affecting the Restricted Property recorded in Cherokee County, Georgia Records, and shall not become effective until the instrument evidencing such change has been duly filed for record in the Office of the Clerk of the Superior Court of Cherokee County, Georgia, and unless written notice of the proposed amendment is sent to every member at least thirty (30) days in advance of any action taken. Every purchaser or grantee of any interest in the Restricted Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the Covenants and Restrictions of this Declaration may be amended as provided herein.

**Section 5. Enforcement.**

Enforcement of the covenants contained in this Declaration shall be by proceeding 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, and such remedies as further provided in this Declaration. Owners acknowledge that this includes the right of Developer to obtain an injunction to prohibit continued improvements to the lots, to seek the removal of specific violations, and to demand monetary damages.

IN WITNESS WHEREOF the Developer has caused this Declaration to be executed by its duly authorized members and/or managers the day and year first above written.

GEIGER, SWORDS, & SHEA, LLC.

*Harvey J. Clark*  
Unofficial witness  
*Brenda Clark*  
Notary Public  
My Commission Expires



By: *[Signature]*  
Title: Member  
By: *[Signature]*  
Title: Member  
By: *[Signature]*  
Title: Member