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STATE OF GEORGIA
COUNTY OF COBB

After Recording, Please Return To:
Smith, Eubanks & Smith, P.C. *W/C*
94 Church Street, Marietta, GA 30060

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR AMBERWOOD CREEK SUBDIVISION**

THIS DECLARATION, made this 25th day of November, 1996, by D & M DEVELOPMENT CORPORATION, a Georgia corporation (hereinafter referred to as "Developer"), as follows:

WITNESSETH:

WHEREAS, Developer is the owner of the subdivision known as AMBERWOOD CREEK SUBDIVISION, and being a subdivision of all those certain lots, tracts or parcels of land situated, lying and being in Land Lot 221 of the 20th District, 2nd Section, Cobb County, Georgia, and being more fully delineated by a plat prepared by The Crusselle Company, Georgia Registered Land Surveyors, dated October 28, 1996, to be recorded in the Office of the Clerk of the Superior Court of Cobb County, said property being more particularly described in Exhibit "A" attached hereto and made a part hereof by reference; and

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

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values in Amberwood Creek Subdivision, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering the common area and improvements thereon, if any and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer will cause to be incorporated under the laws of the State of Georgia, the Amberwood Creek Homeowners Association, Inc., a non-profit corporation, for the purpose of exercising the aforesaid functions.

NOW THEREFORE, Developer declares that the real property described above is and shall be held, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

Amend bk. 10400g. 404

CLERK OF SUPERIOR COURT CLERK

Jay C. Stephenson

96 DEC -14 AM 11:50

FILED AND RECORDED

**ARTICLE I
DEFINITIONS**

Section 1. "Architectural Control Committee" shall mean and refer to D & M Development Corporation, Developer, or such other individuals as Developer may appoint, until all lots in Amberwood Creek Subdivision have been fully developed and permanent improvements constructed thereon and sold to permanent residents, or at such other time as the Developer in its sole discretion shall turn the same over to the Association.

Section 2. "Association" shall mean and refer to Amberwood Creek Homeowners Association, Inc., its successors and assigns.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association.

Section 4. "Common Area" shall mean all real and personal property now or hereafter owned by the Association or the Developer for the common use and enjoyment of the Owners and specifically includes that certain lot, tract or parcel of land designated as Recreation Area situated, lying and being in Land Lot 221 of the 20th District, 2nd Section, Cobb County, Georgia, known as Amberwood Creek Subdivision, and being more fully delineated by a plat prepared by The Crusselle Company, Georgia Registered Land Surveyors, and recorded in the plat records of the Clerk of the Superior Court of Cobb County, Georgia.

Section 5. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration and the By-laws and Articles of Incorporation of the Association.

Section 6. "Declaration" shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth in this entire document, as may from time to time be amended.

Section 7. "Developer" shall mean and refer to D & M Development Corporation, a Georgia Corporation, or any successor in title or any successor in interest to D & M Development Corporation to all or any portion of the Property then subject to this declaration, provided it is stated in the instrument of conveyance that said successor in title or successor in interest is to be the Developer.

Section 8. "Lot" shall mean and refer to residential lots, as well as any future lots subject to the within covenants, conditions, restrictions and easements by the Developer in Amberwood Creek Subdivision or any expansion thereof by Developer.

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Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any lot which is part of the property, but excluding those having such interest merely as security for the performance of an obligation, and further excluding the builder of any Structure on any Lot who holds such title solely for resale upon the completion of such Structure.

Section 10. "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 11. "Property" shall mean and refer to that certain real property described on the plat hereinabove referenced.

Section 12. "Structure" shall mean and refer to:

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

(ii) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot.

**ARTICLE II
ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Purpose, Powers and Duties of the Architectural Control Committee

(a) The purpose of the Architectural Control Committee is to assure that the installation, construction or alteration of any Structure on any Lot is in accordance with the standards determined by the Architectural Control Committee. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for or in connection, with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any structure on any Lot.

(b) To preserve the architectural appearance of the neighborhood, no construction or placement of improvements of any nature whatsoever shall be commenced or maintained by any owner, his family, tenants, visitors, guests, servants, and agents with respect to the exterior of any house or with respect to any other parcel of land, including without limitation the construction or installation of sidewalks, driveways, decks, patios, swimming pools, tennis courts, greenhouses, playhouses, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design, location, and appearance in relation to surrounding structures and topography by the Architectural Control Committee. The Architectural Control Committee shall have the sole discretion to determine whether the plans and specifications submitted for approval are acceptable and in compliance with the total scheme of the neighborhood. If same are not approved, or disapproved within thirty (30) days from date submitted, then same shall be approved by default.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a Lot which is subject to this Declaration shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, and further is not intended to include the builder of any Structure on any lot who holds title to such Lot solely for resale upon completion of the Structure. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration and shall pass automatically to an Owner's successor-in-title to the lot.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A: Initially, the Class A members shall be all Owners with the exception of the Developer, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. If multiple owners of a lot cannot unanimously decide how to cast their vote then no vote may be cast regarding the ownership by that particular Lot.

Class B: The Class B member shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events:

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- (a) seven (7) years from the date of this Declaration; or;
- (b) when, in its discretion, the Developer determines; or
- (c) upon the sale of seventy-five percent (75%) of the Lots.

Upon the termination of the Class B membership, the Developer shall be a Class A member entitled to one vote for each Lot which the Developer still owns.

**ARTICLE IV
PROPERTY RIGHTS**

Section 1. Member's Easement of Enjoyment. At the present time the Developer contemplates that it will provide a Common Area for recreational facilities of any type. The Developer and/or the Association shall have the right, but shall not be required to dedicate property as Common Area. In such event, subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area from time to time designated for such purposes, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (a) the right of the Association to adopt and rules and regulations governing the use of the Common Area;
- (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility nor or hereafter located or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use such recreational facilities.
- (c) the right of the Association to suspend an Owner's voting rights and rights to use any recreational facilities within the Common Area for any period during which any assessment of the Association against said Owner's Lot remains unpaid.
- (d) the right of the Association to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon, and, upon the assent of two-thirds of the Class A and B members to give as security a mortgage conveying all or any portion of the Common area.
- (e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded and, for so long

as there is a Class B member, the approval of the Federal Housing Administration or the Veterans Administration.

(f) the easements reserved in Article VII of this Declaration.

Section 2. Declaration of Use. Any Owner may delegate, in accordance with the By-Law, his right of use and enjoyment in and to the Common Area and the improvements thereon to the members and his family, his tenants, guests and invitees, subject to such regulations and fees as may be established from time to time by the Association.

Section 3. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration.

**ARTICLE V
COVENANT FOR MAINTENANCE
AND CAPITAL IMPROVEMENTS ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the association: (1) annual assessments, and (2) special assessments for capital improvements, such assessments to be established and collect as hereinafter provided. The annual and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of the Lots and the costs and expenses incident to the operation of the Association, including without limitation the maintenance and repair of the Common Area and improvements thereof, the maintenance of services furnished by the Association, the purchase of insurance by the Association, the repair and replacement of improvements on the Common Area, payment of all taxes, insurance premiums and all costs and expenses incidental to the operation and administration of the Association, and establishment and maintenance of a reasonable reserve fund or funds.

Section 3. Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association for the coming year, such budget to include a capital contribution or reserve account in accordance with the capital needs of the Association.

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The budget and the proposed annual assessments to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual meeting. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Developer, so long as there is a Class B member, or (ii) a vote of a majority of the Owners voting in person or by proxy at such meeting on the date when there is no longer a Class B member. In the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then until a budget has been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

The annual maximum assessment may not be increased without the assent of at least two-thirds (2/3) of each class of members at a meeting called for that purpose with at least sixty percent (60%) of the Lot owners or their proxies present after adequate notice. If sixty percent (60%) do not attend, a second meeting may be called with the same notice, and the quorum may be reduced to thirty percent (30%). The Board of Directors may be permitted to increase the maximum annual assessment without a vote of the members, but such an adjustment should not exceed five percent (5%) of the previous year's maximum assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members of each class voting in person or by proxy at a meeting duly called for such purpose, and so long as such assessment applies to the appropriate category therefor.

Section 5. Notice For Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of the meeting.

Section 6. Rate of Assessment. Annual and special assessments must be fixed at a uniform rate for all Lots within the special categories set forth hereinabove.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on January 1 of each year as to all Lots upon which there exist occupied residences. At the time of closing into a purchaser of a completed residence, there shall be paid the sum of Three Hundred Seventy Five Dollars (\$375.00) as the initial assessment for the calendar year in which said residence is purchased. This sum shall be prorated as of the date of closing over the entire calendar year during which the closing occurs. Anything contained herein to the contrary notwithstanding, Developer, on behalf of itself and its successors and assigns, covenants and agrees to pay the annual budget for as long as there is a Class B member

of the Association. Failure of the Developer to meet its obligation to fund budget deficits shall constitute a lien against the land it owns in the aforementioned subdivision. The due dates shall be established by the Developer until there is no longer a Class B member and then by the Board. The Association shall, upon demand, and for a reasonable charge, not to exceed Ten Dollars (\$10.00), furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessment on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a specified Lot is binding upon the Association as of the date of its issuance. If the Association fails to respond to any such request within ten (10) days after receipt of such request, any lien then outstanding shall be deemed to have been extinguished. All such requests shall be sent to the Association in the same manner as provided for notices in Section 5 hereof.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum legal rate per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessments and may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property. The lien provided for in this Section 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 purchase any lot at any sale and convey the same for the purpose of protecting its lien. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, abandonment of his Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of action on lien.

Section 9. Subordination of the Lien to First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed or security deed representing a first lien on said property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessment, charges and liens created herein: (a) all properties to extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) any Common Area which may be added to the development; (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens except the Developer, or builders of any Structures on any Lot who hold such title solely for resale upon the completion of such Structure, provided such Structure at all times remains unoccupied. Accordingly, neither the Developer nor any such speculative builder as defined herein shall be required to pay any such assessment, charge or lien as provided herein.

ARTICLE VI MAINTENANCE

Section 1. Association's Responsibility. Except as otherwise provided for herein, the Association shall maintain and keep in good repair the entrance of the Subdivision over which a Landscape Easement is hereby established. The Association's responsibility with respect to the Landscape Easement shall be deemed to include the maintenance, repair and replacement of (i) all walls, and fences situated within the Easement Area, (ii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Easement Area; and (iii) such other general landscaping in the Easement Area which the Association in its sole discretion decides to undertake.

ARTICLE VII EASEMENTS

Section 1. Utility Easements. There is hereby created in favor of the Association an easement upon, across, over, through and under all of the Common Area, if any, and five (5) feet along all Lot boundary lines for ingress, egress, installation service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area, if any, and the Lots, as provided herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Developer or thereafter approved by Developer or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, Developer or the Association shall have the right to grant such easement on the Common Area, if any, without conflicting with the terms hereof.

Section 2. Easement for Developer. Developer hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, on, over, under and through any part of the Property owned by Developer and the Common Area, if any, for so long as Developer owns any Lot primarily for the purpose of sale:

- (a) For the erection, installation, construction and maintenance of wires, lines and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables and other utilities;
- (b) For the construction of improvements on the Lots;
- (c) For the installation, construction and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility;
- (d) For the use of the Common Area, if any, and any sales offices, model units and parking spaces in connection with its efforts to market Lots;
- (e) For the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots.

Section 3. Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including any management company retained by the Association, to enter upon the Common Area, if any, and the Lots to perform their respective duties.

ARTICLE VIII GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

Section 1. Residential Use. All Lots shall be restricted exclusively to single-family residential use; provided, however, that nothing herein shall be construed to prohibit or prevent developer or any builder of residences in Amberwood Creek Subdivision from using any Lot owned by Developer or such builder for the purpose of carrying on business related to the development, improvement and sale of Lots and/or new homes in Amberwood Creek Subdivision.

Section 2. Common Area. The Common Area, if any, shall be used by the Owners and their agents, servants, tenants, family members, invitees and licensees for such other purposes as may be authorized by the Association.

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Section 3. Debris. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of an Owner's Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property.

Section 4. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot except for the initial construction of residences and development of the Property.

Section 5. Signs.

(a) No signs whatsoever shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sale" or "For Rent" sign, provided, however, that in no event shall any such sign be larger than six (6) square feet in area;
- (iii) directional signs for vehicular or pedestrian safety;
- (iv) entry signs used to identify subdivision, marketing signs used to advertise subdivision by Developer and in conjunction therewith brochure holders.

(b) Following the consummation of the sale of any Lot, the sign located thereon shall be removed immediately.

Section 6. Fences. No chain link or cyclone fences may be placed on the Property.

Section 7. Recreational Vehicles, Trailers, etc. Recreational vehicles, trailers, campers, trucks (except pickups and vans), travel buses or any such equipment are prohibited. No inoperative vehicle shall be parked on any lot for any period of time in excess of fourteen (14) days. No owners or occupants of any lot or parcel of land shall repair or restore any vehicle of any kind upon any lot or upon any parcel of land, except for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

Section 8. Recreational Equipment. No recreational and playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot, except with the prior written approval of the Architectural Control Committee.

Section 9. Accessory Structures. A detached accessory structure may be placed on a Lot to be used for a playhouse, a swimming pool, tennis court, a tool shed, a mailbox, a dog house or a garage; a garage may also be an attached accessory structure. Such accessory structures shall not exceed twenty (20) feet in height and shall conform in exterior design and quality to the dwelling on that same Lot. With the exception of a garage that is attached to a dwelling, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot. Such accessory structures shall also be located with such side and rear setback lines as may be required hereby or by applicable zoning law. Any such accessory structure must be approved, in advance, in writing by the Architectural Control Committee.

Section 10. Improvements on Lots. All construction of dwellings, accessory structures and all other improvements in Amberwood Creek Subdivision shall be undertaken and completed in accordance with the following conditions:

- (a) All construction shall be carried out in compliance with the laws, code, rule, regulations, and orders of all applicable governmental agencies and authorities.
- (b) Concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot.
- (c) All mailboxes shall be provided and located by the Developer at a location deemed suitable by the Developer or by the Architectural Control Committee. Mailboxes shall be maintained by the Lot owners. Any replacement mailboxes shall be the responsibility of the Lot owners and shall be first approved by the Architectural Control Committee.
- (d) No lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.
- (e) No exposed above-ground tanks for the storage of fuel or water or any other substance shall be located any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.
- (f) Adequate off-street parking shall be provided for each Lot.

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- (g) All garages must have doors, and each garage door must be coordinated in design and color with the dwelling to which it is appurtenant.
- (h) Any construction on a Lot shall be at the risk of the Owner of such Lot shall be responsible for any damage to any curbing or street resulting from construction on such Lot; repairs of such damage must be made within thirty (30) days after completion of such construction.
- (i) The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) shall contain not less than two thousand (2,000) square feet for a two story dwelling and not less than two thousand (2,000) square feet for a one story dwelling. No dwelling shall be constructed exceeding three stories in height, including basement, on any Lot.
- (j) Exterior TV or radio receiving equipment shall not be permitted, unless expressly approved in writing by the Architectural Control Committee in its sole discretion.
- (k) All landscaping and gardens which are visible from the street or adjacent Lots shall have the prior approval of the Architectural Control Committee.

Section 11. Animals. No animals, including birds, insects, reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance.

Section 12. Accessory Structures Installed by Developer. Entry signs, fences, walls and landscaping installed by Developer on the Property shall be and are hereby dedicated to the use and benefit of all owners, and shall not be removed or altered without the consent of the Developer as long as there is a Class B member, and subsequently thereto, without a two-thirds (2/3) consent of the Association Class A members.

Section 13. Miscellaneous Fixtures. To provide a neat, attractive and harmonious appearance throughout the neighborhood, no awnings, shades or window boxes shall be attached to or hung or used on the exterior of, any window or door of any house; and no railings, fences, walls, antenna or satellite dishes shall be installed or constructed upon any lot or parcel of land without the prior written consent of the Architectural Control Committee. Further, no foil or other reflective materials shall be used on any windows or sunscreens, blinds, shades or for any other purpose, nor shall any window mounted heating, air-conditioning or fan units be permitted. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained upon any lot or parcel of land, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall.

**ARTICLE IX
GENERAL PROVISIONS**

Section 1. Enforcement.

(a) The Association, the Architectural Control Committee, the Developer or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easement, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) The Architectural Control Committee shall have the right of abatement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any restriction contained in this Declaration within twenty (20) days after mailing of written notice of such violation or breach. The right of abatement means the right of the Architectural Control Committee, through its agents and employees, to enter at all reasonable times upon any Lot, or such action or actions specified in the notice to the Owner, to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions.

Section 2. Severability. If any provisions of the Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 3. Headings. The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles.

Section 4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless at least two-thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument in which said covenants and restrictions are modified in whole or in part, which instrument is filed of record in the appropriate county.

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Section 5. Rights and Obligations. Each grantee of the Developer and Owners, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits, privileges of every character hereby imposed shall be deemed and taken to the covenants running with the land and shall bind any person having at any time any interest or estate in the Property or any portion thereof, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 6. Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his Lot or at such other address as hereinafter provided. Notices to the Association or Board shall be in writing and shall be addressed to the President of the Association at his/her address which presently is:

540 Powder Springs Street, D-25
Marietta, Georgia 30064

or at such different address or addresses as reflect their proper address. Any Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered upon mailing by United States registered or certified mail or when delivered in person.

Section 7. Amendment. This Declaration may be amended at any time and from time to time by the Developer and a vote of two-thirds (2/3) of the Lot Owners; provided, however, so long as there is a Class B member, any amendment shall require approval of the Federal Housing Administration or the Veterans Administration.

- (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith;
- (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;
- (iii) if such amendment is required to obtain the approval of this Declaration by an institutional lender, such as a bank, savings and loan association or life insurance company, or by a governmental lender or purchaser of mortgage loans, such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration, or

(iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private insurance company to insure mortgage loans on the lots subject to this Declaration, such amendment would not include the right to replat Lots or the Common Area unless limited to changes specifically required by a reviewing agency to meet its requirements. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners of the Lots; provided, however such amendment by the Owners shall not be effective unless also signed by the developer, if Developer is the owner of any real property then subject to this Declaration. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot or the Common Area affected thereby until the instrument evidencing such change has been filed of record. Every purchaser or grantee of any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

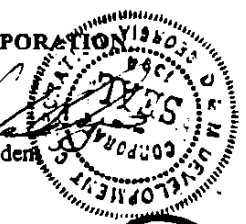
Section 8. Annexation of Additional Property. As long as there is a Class B member, the Developer shall have the right to annex additional adjacent property as part of the Amberwood Creek Subdivision development, subject to the terms and conditions of this Declaration, subject to the prior written consent of the Federal Housing Administration the Veterans Administration.

IN WITNESS THEREOF, D & M DEVELOPMENT CORPORATION has caused this Declaration to be executed in its name and by its duly authorized officers and its seal affixed on the day and year first above written.

DEVELOPER:

D & M DEVELOPMENT CORPORATION

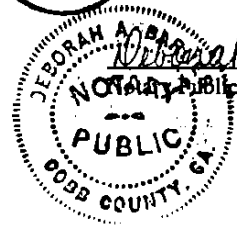
BY: Marvin Waldrip
MARVIN WALDRIP, President



Signed, sealed and delivered
in the presence of:



Deborah A. Barnes
Witness



16

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 221 of the 20th District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:

Beginning at the common corner of Land Lots 221, 222, 235 and 236, said district and section; thence north 03 degrees 12 minutes 34 seconds east a distance of 455.44 feet to a point; thence north 03 degrees 12 minutes 06 seconds east a distance of 99.97 feet to a point; thence north 03 degrees 15 minutes 25 seconds east a distance of 100.05 feet to a point; thence north 03 degrees 14 minutes 37 seconds east a distance of 100.00 feet to a point; thence north 03 degrees 05 minutes 04 seconds east a distance of 99.99 feet to a point; thence north 03 degrees 08 minutes 59 seconds east a distance of 99.97 feet to a point; thence north 03 degrees 13 minutes 08 seconds east a distance of 99.99 feet to a point; thence north 03 degrees 05 minutes 51 seconds east a distance of 103.01 feet to a point; thence north 03 degrees 11 minutes 31 seconds east a distance of 372.58 feet to a point; thence south 86 degrees 36 minutes 09 seconds east a distance of 103.76 feet to a point; thence north 03 degrees 18 minutes 58 seconds east a distance of 207.99 feet to a point; thence south 86 degrees 02 minutes 34 seconds east a distance of 537.92 feet to a point; thence south 27 degrees 08 minutes 38 seconds west a distance of 246.00 feet to a point; thence south 15 degrees 18 minutes 03 seconds east a distance of 64.26 feet to a point; thence south 07 degrees 55 minutes 24 seconds east a distance of 51.28 feet to a point; thence south 15 degrees 15 minutes 38 seconds east a distance of 38.78 feet to a point; thence south 66 degrees 53 minutes 52 seconds east a distance of 91.04 feet to a point; thence north 60 degrees 56 minutes 01 seconds east a distance of 283.97 feet to a point; thence south 59 degrees 00 minutes 40 seconds east a distance of 157.99 feet to a point; thence north 64 degrees 07 minutes 33 seconds east a distance of 81.02 feet to a point; thence north 19 degrees 09 minutes 07 seconds east a distance of 42.45 feet to a point on the southwesterly right-of-way line of Acworth-Due West Road (60-foot right-of-way); thence south 25 degrees 49 minutes 19 seconds east along said right-of-way line a distance of 447.52 feet to a point on the centerline of Little Allatoona Creek also known as Mill Creek; thence southwesterly along the centerline of said creek a distance of 1270.3 feet to the southern line of Land Lot 221; thence north 86 degrees 44 minutes 50 seconds west along said land lot line a distance of 935.50 feet to the Point of Beginning. Being 40.752 acres and all as shown on plat of survey for D&M Development Corporation prepared by The Crusselle Company, dated January 26, 1996, revised February 16, 1996.

WP: D&M. Leg

~~BK 9440PG095~~

BK 10026PG318

1200
SOAK

SMITH, EUBANKS & SMITH, P.C.
Post Office Box 1186
Marietta, Georgia 30061 W/C

STATE OF GEORGIA
COUNTY OF COBB

IN RE: DEED BOOK 10026,
PAGE 302, COBB COUNTY
RECORDS

**FIRST AMENDMENT TO DECLARATION OF
PROTECTIVE COVENANTS OF
AMBERWOOD CREEK SUBDIVISION**

THIS AMENDMENT is made and published the 24th day of April, 1997, by D & M DEVELOPMENT CORPORATION, (hereinafter referred to as "Declarant");

W I T N E S S E T H:

THAT, WHEREAS, Declarant published its Declaration of Covenants, Conditions, Restrictions and Easements (hereinafter referred to as the "Declaration") of Amberwood Creek Subdivision, said subdivision being a subdivision of all those certain lots, tracts or parcels of land situated, lying and being in Land Lot 221, 20th District, 2nd Section, Cobb County, Georgia, and being more fully delineated on that certain plat of survey recorded in Plat Book 166, page 57, Cobb County, Georgia Records; said Declaration being dated November 25, 1996, and recorded December 4, 1996, in Deed Book 10026, page 302, Cobb County, Georgia Records;

WHEREAS, Declarant desires to further amend the Declaration pursuant to the authority granted therein;

NOW THEREFORE, for and in consideration of the premises, said Declaration is hereby amended as follows:

1.

Declarant hereby modifies the provisions of Article V, Section 7 of the Declaration as follows:

At the time of closing into a purchaser of a completed residence, there shall be paid the sum of Four Hundred Seventy Five Dollars (\$475.00) as the initial assessment for the calendar year in which said residence is purchased.

2.

Except as otherwise specifically amended herein, the Declaration shall remain in full force and effect.

FILED AND RECORDED
97 JUN -4 AM 11:53
JAY C. STEPHANSON
COBB SUPERIOR COURT CLERK

BK 10400PG404

961545

IN WITNESS WHEREOF, the undersigned Declarant has caused this Amendment to be executed by its duly authorized representative on the day and year first above written.

This 14th day of April, 1997.

OWNER/DECLARANT:

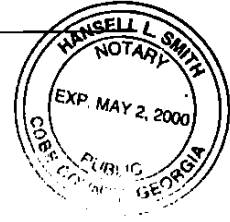
D & M DEVELOPMENT CORPORATION

BY: *Marvin Waldrip*
MARVIN WALDRIP, President

Signed, sealed and delivered this 24th day of April, 1997, in the presence of:

[Signature]
WITNESS

Hansell L. Smith
NOTARY PUBLIC



Paul Beck Curtis

SECOND AMENDMENT TO DECLARATION OF
PROTECTIVE COVENANTS OF
AMBERWOOD CREEK SUBDIVISION

This amendment is made and published the 9th day of November 2001, by the Homeowners Association of Amberwood Creek Subdivision.

WITNESSETH:

That, whereas the homeowners of Amberwood Creek Subdivision desire to amend the Declaration, said subdivision being a subdivision of all those certain lots, tracts or parcels of land situated, lying and being in Land Lot 221, 20th District, 2nd Section, Cobb County, Georgia, and being fully delineated on that certain plat of survey recorded in Plat Book 166, page 57, Cobb County, Georgia Records; said Declaration being dated November 25, 1996, and recorded December 4, 1996, in Deed Book 10026, page 302, Cobb County, Georgia Records;

Whereas, having complied with Article IX, Section 7, Item (IV), Page 16, of the Declaration, having obtained the signatures of over 75% of the Owners of Lots and the Developer, said Declaration is amended as follows:

1.

The Declaration is amended to replace Article VIII, Section 8, Page 11, with the following:

Section 8. Recreational Equipment: Children's swingsets/playsets and basketball goals are permitted if placed on the lot in accordance with this section. All swingsets/playsets shall be placed in the backyard (i.e. behind a line drawn across the lot even with the rear of the home). Basketball goals must be placed to the rear portion of the driveway on a side entry garage, no closer to the street than even with the garage door closest to the street. On a front entry garage driveway the basketball goal must be at least 25 feet back from the street and in no case any closer to the street than halfway down the driveway. The basketball goal support pole must be black and the backboard either clear or white. No other recreational or playground equipment shall be placed or installed on any Lot nor any swingsets/playsets or basketball goals installed/placed not in accordance with this section without the prior written approval of the Architectural Control Committee.

2.

Except as otherwise specifically amended herein, the Declaration shall remain in full force and effect.

Deed Book 13442 Pg 1915
Filed and Recorded Nov-09-2001 01:49pm
2001-0190087

Jay C. Stephenson

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

IN WITNESS WHEREOF, the undersigned representative of the Association has caused this Amendment to be executed on the day and year above written.

This 9th day of November 2001.

BY: *Paul Beck*
PAUL C. BECK
VICE PRESIDENT AMBERWOOD CREEK HOA

Deed Book 13442 Pg 1916
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

Signed, sealed and delivered this
9th day of November 2001.

Kate Sumner
WITNESS

[Signature]
NOTARY PUBLIC

