

STATE OF GEORGIA  
COUNTY OF BARTOW

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE RETREAT AT PUMPKINVINE SUBDIVISION

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR THE RETREAT AT PUMPKINVINE SUBDIVISION is made this  
\_\_\_\_\_ day of \_\_\_\_\_, 2005, by Pumpkin Vine Development, LLC hereinafter  
referred to as 'Declarant'.

*WITNESSETH:*

WHEREAS, Pumpkin Vine Development, LLC ("Declarant") has previously filed with  
the Clerk of the Superior Court of Bartow County, Georgia a Declaration of Covenants,  
Conditions and Restrictions recorded at Deed Book 1946, Page 386-416, hereinafter  
referred to as "Declaration"; and

**WHEREAS**, Article IX, Section 6 of said Declaration provides that the Declaration  
may be amended; and

**WHEREAS**, Developer is the sole owner of all lots in the subdivision.

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

1.

Article VI, Section 3 is hereby deleted in its entirety and substituted in lieu thereof a  
new Article V, Section 3 to read as follows:

Section 3. Maximum Annual Assessment. Until July 1 of the year immediately  
following the conveyance of the first Lot to an Owner, the maximum annual assessment  
shall be three hundred dollars (\$300.00) per Lot.

(a) From and after July 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

2.

Article V, Section 7 is hereby deleted in its entirety and substituted in lieu thereof a new Article V, Section 7 to read as follows:

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the date set by the Board of Directors of the Association, as to all Lots. At the time of closing into a purchaser of a lot, there shall be paid the sum of Three Hundred Dollars (\$300.00) as the initial assessment for the calendar year in which said lot and any improvements 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 or any Builder building for the purpose of resale shall not be responsible for assessments on Lots owned by the Developer. 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 Twenty-Five Dollars (\$25.00), 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 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 thirty (30) days after receipt of such request, any lien then outstanding shall be deemed to have been extinguished.

3.

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

**IN WITNESS WHEREOF**, Pumpkin Vine Development, LLC has caused this First Amendment to be executed in its name and by its duly authorized officer and its seal affixed, where applicable, on the day and year first above written.

“Developer”

Signed, sealed and delivered  
this \_\_\_\_ day of July, 2005.  
in the presence of:

PUMPKIN VINE DEVELOPMENT, LLC

\_\_\_\_\_  
Witness

\_\_\_\_\_  
R. Brad Dilbeck, Managing Member

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
G. Stephen Evans, Managing Member

**STATE OF GEORGIA  
COUNTY OF BARTOW**

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE RETREAT AT PUMPKINVINE SUBDIVISION**

**THIS DECLARATION**, made this \_\_\_\_ day of \_\_\_\_\_, 2005, by Pumpkin Vine Development, LLC (hereinafter referred to as the "Developer").

**W I T N E S E T H:**

**WHEREAS**, Developer is the owner of certain real property, which real property is more particularly described in Exhibit "A" attached hereto and by reference made a part hereof; and

**WHEREAS**, Developer desires to provide for the preservation and enhancement of the property value in THE RETREAT AT PUMPKINVINE SUBDIVISION and for the maintenance of the property and improvements thereon, and to this end desires to subject the property described in Exhibit "A" to the covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

**WHEREAS**, Developer has deemed it desirable, for the efficient preservation of the values in THE RETREAT AT PUMPKINVINE SUBDIVISION, to provide for an agency to which should be delegated and assigned the powers of owning, maintaining and administering the common area and improvements thereon 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 RETREAT PROPERTY OWNERS ASSOCIATION, INC., a non-profit corporation, for the purpose of exercising the aforesaid functions.

**NOW THEREFORE**, Developer and Owner declare that the real property described in Exhibit "A" and any additional property as may by subsequent amendment hereto be added to and subjected to all or part of this Declaration, shall be held transferred, sold,

mortgaged, conveyed, leased, occupied and used subject to the easements, covenants, conditions and restrictions hereinafter set forth, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and it shall inure to the benefit of each owner.

## **ARTICLE I DEFINITIONS**

Section 1. "Architectural Control Committee" shall mean and refer to PUMPKIN VINE DEVELOPMENT, LLC and such other individual(s) as Developer may appoint until all lots in THE RETREAT AT PUMPKINVINE SUBDIVISION shall have been fully developed and permanent improvements constructed thereon and sold to Permanent residents or at such other time as it, in its sole discretion, shall turn the same over to the Association.

Section 2. "Association" shall mean and refer to THE RETREAT PROPERTY OWNERS 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, or for which easement rights have been granted, by the Association for the common use and enjoyment of the Owners and shall include an easement for the maintenance of the entrance and all landscaping thereon, the privacy wall, lighting, the irrigation system, and the detention area.

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 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 PUMPKIN VINE DEVELOPMENT, LLC

Section 8. "Lot" shall mean and refer to any parcel of land shown upon any recorded subdivision plat of the Property upon which a single-family residence may be or has been constructed.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot that is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

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 in Exhibit "A" attached hereto and by reference made a part hereof, together with such additional real property as may by subsequent amendment hereto be added to and subject to this Declaration.

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 bath house, 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; (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 waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and (iii) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) of this Section 12, applies to such change.

Section 13. "Building Site" Building Site means and refers to any parcel of land located on the Property on which a single-family dwelling may or will be constructed.

Section 14. "Survey" Survey means and refers to that certain Survey for THE RETREAT AT PUMPKINVINE SUBDIVISION prepared by \_\_\_\_\_, and dated \_\_\_\_\_, bearing the seal of \_\_\_\_\_, G.R.L.S.

Section 15. All roads in the development, THE RETREAT AT PUMPKINVINE SUBDIVISION, are private roads for the use and benefit of all lot owners. The development shall have a gated entrance to the Development.

## **ARTICLE II ARCHITECTURAL CONTROL COMMITTEE**

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

(a) The purpose of the Architectural Control Committee ("ACC") is to assure that the installation, construction or alteration of any Structure on any Lot is submitted to the Architectural Control Committee for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the development of the Property; and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the 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, 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 portion of any lot or 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 forty-five (45) days from date submitted, then same shall be approved by default.

Section 2. Meetings. The Architectural Control Committee shall hold regular meetings at least once every three (3) months or more often as may be established by the Architectural Control Committee. Special meetings may be called by the Architectural Control Committee. Regular and special meetings of the Architectural Control Committee shall be held at such time and at such place as the Architectural Control Committee shall specify. Notice of each regular or special meeting of the Architectural Control Committee shall be mailed to each member thereof at his residence or at his usual place of business at least three (3) days before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the Architectural Control Committee who signs a waiver of notice either before or after the meeting. Attendance of a member of the Architectural Control Committee at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all obligations with respect to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the Architectural Control Committee, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof, at which a quorum is present, shall constitute the acts of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present.

Section 3. Action of Members of the ACC. Any member of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC. The action of such member with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval permit of authorization, subject, however, to review any modification by the ACC on its own motion or appeal by the applicant to the ACC as provided herein. Written notice of the decision of such member shall, within five (5) days thereof, be given to any applicant for an approval permit or authorization. The applicant may, within ten (10) days after receipt of notice for any decision that he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed, shall be submitted to, and reviewed promptly by, the ACC, but in no event later than forty-five (45) days after the filing of such request. The decision of a majority of the members of the ACC with respect to such matter shall be final and binding.

Section 4. Exception so long as Developer controls ACC. Until such time as Developer relinquishes control of the ACC, Developer shall not be required to comply with provisions of Section 2 and Section 3 of this Article.

Section 5. Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way that materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefor shall have been first submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC, including, without being limited to:

- (a) Floor Plans;
- (b) Specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors of all proposed Structures and alterations to existing Structures also showing front, side and rear elevations thereof; and
- (c) Plans for landscaping.

Section 6. Approval of Builders. Any builder, prior to performing any work on any Lot or Building Site in the Property, must first be approved by the ACC as to financial stability, building experience and ability to build structures of the class and type of those which are to be built on the Lot. Such approval may be granted or withheld in the sole and uncontrolled discretion of the ACC.

Section 7. Approval and Disapproval of Plans and Specifications.

(a) The ACC shall have the right to approve or disapprove any plans and specifications submitted to it in its sole and uncontrolled discretion, which approval or disapproval may be based upon any grounds, including purely aesthetic considerations that shall be deemed sufficient.

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

(c) Neither Developer nor any member of the ACC shall be responsible or liable in any way for the defects in any plans or specifications approved by the ACC, nor for any structural defects in any work done according to such plans and specifications approved by the ACC. Further, approval of plans and specifications by the ACC shall not be deemed to represent or warrant to any Person the quality, function or operation of the structure or of any construction, workmanship, engineering, materials or equipment. Neither Developer nor any member of the ACC shall be liable in damages or in any other respect to anyone submitting plans or specifications for approval under the Article, or to any Owner, or to any other Person having an interest in any of the Property by reason of mistake in judgment, negligence, misfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. By submission of such plans and specifications to the ACC, every Owner of any Lot releases and agrees to hold harmless and to defend Developer and any member of the ACC from any such alleged liability, claim and/or damage.

Section 8. Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within forty-five (45) days after receipt thereof. Approval by the ACC; if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the ACC to take action within forty-five (45) days of the receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

Section 9. Right of Inspection. The ACC, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot or Structures thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and the ACC shall not be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection.

Section 10. Violations.

(a) If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall be entitled and empowered to enjoin or remove any such construction. Any costs and expenses incurred by the ACC in enjoining and/or removing any construction or improvements shall be added to and become a part of the assessment to which the Owner and his Lot are subject.

(b) The ACC shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within twenty (20) days after the mailing of the aforesaid notice of violation, then the ACC shall have the right of abatement as provided in Section 1(b) of Article VIII hereof.

Section 11. Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 9 hereof. The fee shall be established from time to time by the ACC.

Section 12. Variances. Notwithstanding anything to the contrary contained herein, Developer shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for THE RETREAT AT PUMPKINVINE SUBDIVISION.

**ARTICLE III  
COMMON PROPERTY**

Section 1. Conveyance of Common Property.

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of

the Owners (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration of Covenants, Restrictions, and Easements, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for scenic and natural area preservation and for general recreational use. Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 1 at any time prior to conveyance of such common Property to the Association.

(c) In addition to the property described in subsection (b) of this Section 1, the Declarant may convey to the Association in accordance with this Section 1 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

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

## Section 2. Right of Enjoyment.

Every Owner of a Residence shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2 is subject to suspension by the Association as provided in Section 3.

## Section 3. Rights of the Association.

The rights and privileges conferred in Section 2 hereof shall be subject to the right, and where applicable, the obligation, of the Association, acting through the Board to:

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

- (b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest any or all of the association's property, including Common Property and revenues from assessments, user fees and other sources; and provided, however, that, during the period when the Declarant has the right to appoint members of the Board, the Association shall not deed, grant or convey to anyone any mortgage, deed to secure debt or other security interest, on or in Common Property constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association;
- (c) grant easements of rights of way over Common Property to any municipality or  
other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;
- (d) dedicate or transfer all or any part of the Common Property or interests therein to  
any municipality or other governmental body, agency or authority for such purposes and, subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the By-Laws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority.
- (e) charge reasonable fees in connection with the admission to and use of facilities or  
services of Members and non-members; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;
- (f) suspend the voting rights of any Member and the right of enjoyment granted or  
permitted by Section 2;
- (g) to sell, lease or otherwise convey all or any part of its properties and interests therein;
- (h) enforce all applicable provisions of valid agreements of the Association relating to  
the Common Property or any part thereof; and,

- (i) maintain any and all landscaping treatments previously installed by the Declarant,  
to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads for Bartow County, Georgia.

Section 4. Conveyance of Common Property by Declarant to Association.

Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or its Members.

Section 5. Types of Common Property.

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

Section 6. Delegation of Use.

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

Section 7. Maintenance.

The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, the Association shall maintain grass or other landscaping located along or in dedicated rights of way which were installed and maintained by Declarant, to the extent permitted by the applicable governmental authority.

The Association shall also have the right, but not the obligation to maintain and provide services for other property not owned by the Association whether located within or without the boundaries of the Community, and to enter easements and covenants, to share cost agreements regarding such property where the Board has determined that this would benefit the Owners.

Section 8. Monument Area and Gate Area.

Every Owner shall have a right and easement of enjoyment in and to the Monument and Gate Easement Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable fees to maintain the sign, gate, entrance features, and easement area.

Section 9. Private Roadways.

- (a) All roads in the THE RETREAT AT PUMPKINVINE SUBDIVISION are private roads and each and every lot owner its successors or assigns shall have a perpetual easement for ingress or egress over and onto such roads which shall be appurtenant to and run with a title to each lot. All roadways in THE RETREAT AT PUMPKINVINE SUBDIVISION shall also include easements for any and all utilities including but not limited to power and water.

Section 10. Maintenance and Repairs to Roads.

The cost repairs and maintenance of any roads shall remain the responsibility of Declarant until such time as a final plat has been approved by the governing authority of Bartow County for the THE RETREAT AT PUMPKINVINE SUBDIVISION at which time the cost and expenses for maintaining the roads shall be the responsibility of the Homeowner's Association upon such time as final plat has been approved by the governing authority of Bartow County.

The Homeowner's Association shall have the full right of collection for maintenance of all roads or other areas required to be maintained by the Homeowners Association.

The annual assessments for repair and maintenance of the road may be assessed and provided for by the Board of Directors for the Homeowner's Association for THE RETREAT AT PUMPKINVINE SUBDIVISION. The Board may provide for the assessment to be paid monthly or within thirty (30) days after the annual assessment has been set by the Board.

**ARTICLE IV  
PROPERTY RIGHTS**

Section 1. Owner's Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to adopt and publish rules and regulations governing the use of the Common Area.

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities, if there are any, by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) 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 decision or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded;

(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. The lien and encumbrance of any such mortgage, however, shall be subject and subordinate to all rights, interests, easements and privileges herein reserved or established for the benefit of Developer, any Owner, or the holder of any mortgage, irrespective of when executed, given by Developer.

(e) the easements reserved in Article VI of this Declaration.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right or use and enjoyment in and to the Common Area and the improvements thereon to the members of his family, his tenants, guests and invitees, or contract purchasers who reside on the property, subject to such regulations and fees as may be established from time to time by the Association.

Section 3. Title to Common Area. Title to the Common Area will be conveyed to the Association by the Developer, and approved by the Association, after all lots placed for sale by the Developer have been sold or at such earlier time as the Developer may elect, and only at such time shall the Association have the right to control said property subject to the terms herein. The Association shall be obligated to accept title to all Property to be designated by Developer as Common Area at such time as Developer may elect.

Section 4. No Partition. There shall be no judicial partition of the Property or any part hereof, 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 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 and the term "Owner" 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 ("Builder"). 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 classes of voting membership:

Class A: 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.

Class B: The Class B member(s) 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 either of the following events.

(a) when the total votes outstanding in the Class A membership equal the total outstanding in the Class B membership; or

(b) seven years from the date of this Declaration; or

(c) when in its discretion, Developer so determines.

Section 3. Notwithstanding any provision contained herein to the contrary, for so long as Developer retains the right and obligation of the Association, it shall not be subject to any voting control of the Owners.

## **ARTICLE VI COVENANT FOR MAINTENANCE AND ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, other than Developer or any Builder building for the purpose of resale, of any Lot by acceptance of a deed therefor, whether or not it shall be 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 collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be charged on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' 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 any entrance areas or other areas within the Property and improvements thereon, 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. Maximum Annual Assessment. Until July 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be five hundred dollars (\$500.00) per Lot.

(a) From and after July 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting called for this purpose.

Section 5. Notice and Quorum 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 thirty (30) days nor more

than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the date set by the Board of Directors of the Association, as to all Lots. At the time of closing into a purchaser of a lot, there shall be paid the sum of Five Hundred Dollars (\$500.00) as the initial assessment for the calendar year in which said lot and any improvements 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 or any Builder building for the purpose of resale shall not be responsible for assessments on Lots owned by the Developer. 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 Twenty-Five Dollars (\$25.00), 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 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 thirty (30) days after receipt of such request, any lien then outstanding shall be deemed to have been extinguished.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments not paid within thirty (30) days after the due date, shall bear interest from the due date at the rate of the maximum legal rate per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment 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 attorneys fee 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 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 Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage 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 assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Area; and (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 as set forth in Article V, Section 7, pertaining to the Developer and a Builder.

Section 11. Effect of Delinquency on Class A Members. Notwithstanding all of the foregoing rights of the Association, the Association shall have the further right to prohibit a delinquent Class A member, such delinquency being as herein defined, from using in any manner the swimming pool, tennis courts and related facilities.

## **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 for ingress, egress, installation, replacement, repair and maintenance of all utility and 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 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 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 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 to proper attachments in connection with the transmission of electricity, gas, water, telephone, community antennae, 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 and Clubhouse, if any as a sales office, along with 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.
- (f) For the placement of marketing signs on the Property, Common Area, and any Lot by Developer or by any Builder with Developer's prior approval.

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 and the Lots to perform their respective duties.

## **ARTICLE VIII GENERAL COVENANTS, CONDITIONS AND RESTRICTIONS**

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

Section 1. Application. The covenants, conditions and restrictions contained herein shall pertain and apply to all Lots, Building Sites and to all Structures erected or placed thereon.

Section 2. Restriction of Use. All Building Sites shall be restricted exclusively for the construction of single-family dwellings to be constructed pursuant to and consistent with this Declaration. No use of a dirt bike shall be allowed on any Lot or building site, and no Lot or building site shall be used as a course or track for dirt bikes. No Lot or Building Site,

or any portion thereof, shall at any time be used for any commercial, business or professional purpose; provided, however, that nothing herein shall be construed to prohibit or prevent Development or any builder of residences in THE RETREAT AT PUMPKINVINE SUBDIVISION from using any Lot owned by Development or such builder for the purpose of carrying on business related to the development, improvement and sale of Lots and/or new homes in THE RETREAT AT PUMPKINVINE SUBDIVISION or for a purpose Developer deems to be for the benefit of THE RETREAT AT PUMPKINVINE SUBDIVISION.

Section 3. Common Area. The Common Area shall be used only by the Owners and their agents, servants, tenants, family members, invitees and licensees for access, ingress to and egress from their respective Lots and for such other purposes as may be authorized by the Association.

Section 4. Nuisances.

(a) No unlawful, noxious or offensive activities shall be carried on in any Lot, or upon the Common Area, nor shall anything be done therein or thereon which, in the judgment of the Board, constitutes a nuisance, causes unreasonable noise or disturbance of others or unreasonably interferes with other Owners' use of their Lots and/or the Common Area.

(b) 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 junk cars or junk vehicles of any kind shall be allowed to remain on any lot in the subdivision. No inoperable vehicles may remain on any lot over sixty (60) days. No nuisance shall be permitted to exist upon any portion of the Property. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devises, except security devices used exclusively for security purposes, shall be located, used or placed on the Property or any portion thereof.

Section 3. Resubdivision of Property. No Building Site or 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 that may create erosion or siltation problems shall be undertaken on any Building Site 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 run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 5 hereof. 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 and alteration of any Structure shall be included in the Design Standards of the ACC.

Section 6.Temporary Buildings. No temporary structure shall be installed or maintained on any Building Site without the specific written approval of the ACC. All applications for approval of any temporary structure will include provisions for its being dismantled and removed from the Building Site in question.

### Section 7.Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall without the ACC's prior written approval of plans and specifications therefore, be installed, altered or maintained on any Building Site, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings;
- (ii) such signs in accordance with plans and specifications approved by the ACC;
- (iii) not more than one "For Sale" or "For Rent" sign; provided, however, that in no event shall any such sign be larger than four (4) square feet in area;
- (iv) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC;
- (v) such signs as may be required by Developer or builder; and
- (vi) temporary signage no larger than 30" x 30" for promotions including but not limited to political or yard sale signs.

(b) Following the consummation of the sale of any lot, the "For Sale" sign and the builder's sign located thereon, if any, shall be removed immediately.

(c) No sign shall be allowed which the Developer or Board of Directors deems a nuisance.

Section 8. Fences. All fences and walls shall compliment the design, texture and colors of all structures on the same lot. The maximum height of any fence or wall shall be six feet above grade. All fences and walls shall include planting as an integral component, and shall not attract attention as distinct architectural elements. All fence posts must be placed on the inside yard. No fence shall be located closer to the street than the rear corner of the house, unless approved by the ACC. All fences shall be approved by the ACC before construction begins.

Section 9. Parking Lots, Road and Driveways. No parking lot, road or driveway shall be constructed or altered on any Building Site without the prior written approval of the ACC of plans and specifications for such parking lots, roads and driveways. Guidelines relating to the design and location of parking lots, roads and driveways may be included in the Design Standards of the ACC.

Section 10. Antennae. All exterior television antennas on any Lot shall be out of plain view of the street. No antenna or satellite dishes shall be installed or used for the purpose of transmitting electronic signals. No satellite dish is permitted on any Building Site that is visible from the street. Satellite dishes 24 inches or less in diameter are permitted to be visible from the street subject to approval by the ACC.

Section 11. Maintenance. Each Owner shall keep and maintain each Building Site 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, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorist 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 have the Right of Abatement as provided in Section 1(b) of Article VIII hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

Section 12. Solid Waste.

(a) Except during approved construction and in accordance with all laws and ordinances, no Person shall burn rubbish, garbage, or any other solid waste on any Building Site or on Common Property.

(b) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Building Site unless in a structure or manner approved by the ACC.

Section 13. Clotheslines. Outside clotheslines shall not be visible from the street, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall, that is visible from the street.

Section 14. Recreational vehicles, Trailer, etc. Recreational vehicles, trailers, work-related vehicles, boats, and such shall be parked in garages, or to the side or rear of lot so as not to be in plain view from the street. Any screening shall conform to the exterior design and quality of the dwelling on the same lot. No vehicles over 40' shall be parked on any lot of the subdivision. Tractor-Trailer trucks, rigs or cabs are not allowed in the subdivision except for deliveries to a residence or job site.

Section 15. Recreational Equipment. All recreational and playground equipment shall be placed or installed in the rear of the house.

Section 16. Outbuildings. A detached accessory structure may be placed on a lot to be used for a playhouse, swimming pool, tennis court, tool shed, dog house, garage, or other customary residential use, subject to ACC written approval. A garage may also be an attached accessory structure. These structures are allowed so long as they are in good condition, well maintained, and attractive. They may not be unsightly nor adversely affect the value of other lots in the subdivision. Such accessory structures shall not exceed twenty (20) feet in height, and shall conform in exterior design and quality to the dwelling on the same lot. Constructed structures should also match dwelling in color and materials. 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. Such accessory structures shall also be located within side and rear setback lines as required hereby or by applicable zoning law.

Section 17. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in THE RETREAT AT PUMPKINVINE 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 rules, regulations and orders of all applicable governmental agencies and authorities. No single-family residential structure shall be located on any lot unless said structure shall have at least 3,000 square feet of heated living area. The ACC reserves the right to enforce living area square footage greater than provided as the minimums.

(b) No exposed concrete block, cement block foundations or concrete retaining walls are allowed unless it has a stamped decorative finish or brick or stone veneer and there shall be no chain-link fence or fences or walls of any other material which the ACC determines to be incompatible with dwellings or other structures in THE RETREAT AT PUMPKINVINE SUBDIVISION.

(c) Only one mailbox shall be located on any Lot, which mailbox shall be approved by the ACC, and shall be placed and maintained to complement the dwelling to which it is appurtenant to the extent such mailbox is permitted to be located and maintained by the United States Postal Service, its successors and assigns.

(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, approved by the ACC, 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 on any Lot other than an apparatus relating to solar energy, the location and design of which must first be approved by the ACC. Notwithstanding the foregoing, above-ground LP tanks are acceptable so long as they are screened and located in the rear of the house.

(f) No on-street parking is allowed with the exception of occasional entertainment overflow and construction site parking.

(g) Containers for garbage shall be stored out of sight from the street and promptly returned to said site after garbage pickup by a private entity.

(h) All exterior compressor units shall be ground mounted and screened by fencing or planting of a density and height to hide the unit effectively.

(i) Any screened porch which is a part of any dwelling or accessory structure must have a dark color screen, and no bright color silver finish screens may be used.

(j) Driveways shall be constructed with concrete, provided, however, that other hard surface materials may be approved by the ACC if an exception is requested when plans and specifications are submitted to the ACC for approval. Existing trees, topography and landscape plantings should be taken into consideration.

(k) The construction of any house in the subdivision once started and a building permit is issued, will be completed within twelve (12) months from the actual beginning of the construction. The beginning of the construction of the house shall be such time as the builder or owner or their agents or employees begin to grade or clear a lot or start any actual work toward

construction of the house. After approval by the ACC, all structures must conform to plans and specifications as submitted to the ACC. Any change must have the prior approval by the ACC. All stumps and brush are to be removed from lots prior to foundation construction, and debris shall be removed as often as necessary to keep the lot and any structure thereon attractive. Construction debris shall not be dumped in any area of the subdivision. Lots shall be graded in any such manner so as not to block any natural or man-made swales, ditches or drainage structures. Earth, hay berms or silt fences shall be installed in cooperation with the Bartow County Building Inspection Department. Whenever possible, lots shall drain independently rather than to adjoining lots.

(l) All residences shall have a minimum of a double-enclosed garage with one or more garage doors. Garages may be attached, detached, or a drive-under. Garage doors shall be coordinated with all structures on the lot and materials and colors for such doors shall be specified on the plans and specifications submitted to the ACC for approval. The ACC may approve the use of carports, provided, however, that all vehicle storage facilities visible from the street shall be totally enclosed.

(m) Silver-finish aluminum doors (including sliding doors) and windows shall not be approved.

(n) All exterior colors and materials of all structures shall be specified in the plans and specifications submitted to the ACC for approval and shall be subject to the color and material guidelines contained herein. Should a builder or homeowner wish to make changes in the scheduled colors, this may be done only by consulting with the ACC in order to achieve a well-coordinated color scheme throughout the subdivision.

(o) Roofing material and color shall be specified in the plans and specifications submitted to the ACC for approval, and shall be subject to the color and material guidelines contained herein. No plumbing or heating vent shall penetrate these roof surfaces which face the street or streets adjacent to the residential structures. All plumbing or heating vents that do penetrate the roof surface shall be painted to blend with the roof color. Minimum roof pitch is 6/12.

(p) Pre-fabricated or factory built structures shall not be permitted within the THE RETREAT AT PUMPKINVINE Subdivision, and such manufactured units shall not be employed as elements in the construction of residential structures affixed to real property within the subdivision except by express written consent of the ACC.

(q) A written plan of landscaping must be submitted to the ACC prior to installation of any materials; this plan should include a drawing to show location and description of all "hardscape" items such as fences, walls, rocks, fountains, statuary and so-forth.

(r) All front entry steps and landings shall be constructed of brick, stone, stucco, or decorative stamped concrete. All other materials shall be approved by the ACC.

(s) All front porch columns shall be a minimum diameter of 6" for round columns and a minimum of 5" x 5" square columns.

(t) All houses constructed on any lot in the subdivision shall be placed behind the minimum building set-back line as shown on the subdivision survey. Location of structures - all structures together with related paved and open areas, shall be located on each lot to minimize changes in the existing grade and appearance; preserve existing trees and vegetation to maximum extent possible; control drainage and prevent erosion; and create prime views and conceal unsightly areas.

(u) All materials used in construction of any house in the subdivision shall be subject to the colors and materials guidelines as set forth herein, and must be approved by the ACC.

(A) Materials.

1. A minimum number of exterior materials shall be used on structures to avoid a cluttered appearance.

2. A minimum of fifty percent (50%) of the front of each house shall be brick or stone.

3. No vinyl siding shall be allowed.

4. Recommended materials include:

(a) Natural wood and leading manufactured siding products.

(b) Brick - all brick samples must be submitted for approval.

(c) Stone - all stone samples must be submitted for approval.

(d) Natural cedar shakes or shingles.

(e) Asphalt shingles - all shingle samples must be submitted for approval.

(f) Garage doors must be approved.

(g) Stucco - the color and shade of which shall be submitted for approval.

(B) Colors.

1. The exterior colors of the walls and roof of a single-family residential structure shall be compatible and harmonious with the colors of nearby single-family residential structures. Highly reflective colors shall be avoided.

2. High contrast colors, when used on structures shall be limited to major architectural elements such as entry doors.

(w) All screening shall be used within the subdivision to define private spaces or to attract or divert attention to or from particular views. The methods of screening and the subject to be screened are subject to the approval of the ACC.

(x) In-ground swimming pools only are permitted. Pools shall be located in rear of house. Location and design of pools shall be approved by the ACC. No above-ground pools are permitted except children's wading pools which shall not exceed 24" in depth and 10' in diameter.

Section 18. Animals. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. Provided; however, there shall be only two dogs or cats per person per household with a maximum of 5 per household. No animal shall be allowed to become a nuisance. No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have first been approved by the ACC. Said structure shall not be visible from the street. Horses shall only be allowed on Lots 14 through 16. Notwithstanding the foregoing, no pigs, fowl, or other farm animals are allowed on any lot.

Section 19. Water Supply No individual water supply system shall be permitted on any Lot without the prior written approval of the ACC. If such approval is given, such system must be located, constructed and equipped in accordance with the requirements, standards and recommendations of federal, state and local public health authorities, and all necessary approvals of such system as installed shall be obtained from such authorities at the sole cost and expense of the Owner of the Lot to be served by such system.

Section 20. 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 front exterior of, any window or door of any house; and no railings, fences, or walls shall be installed or constructed upon any lot or parcel of land without the prior written consent of the Architectural Control Committee.

**ARTICLE IX  
GENERAL PROVISIONS**

Section 1. Enforcement.

(a) The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions and covenants now or hereafter imposed by the provisions of this Declaration. Failure by the Association or 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 ACC 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 the mailing of written notice of such violation or breach. The right of abatement means the right of the ACC through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation or breach exists, and to take 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 provision 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 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 and sections.

Section 4. 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 and covenants and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be 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 5. 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 given by Owner to Developer. Notices addressed as above shall be deemed delivered upon mailing by the

United States registered or certified mail, return receipt requested, or when delivered in person.

Section 6. Amendment. This Declaration may be amended at any time and from time to time by Developer and a vote of 2/3 of the Lot Owners other than Developer. This Declaration may be amended unilaterally at any time and from time to time by Developer:

(a) 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;

(b) 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;

(c) 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

(d) 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; provided, however, any such amendment shall not make any substantial changes in any of the provisions of this Declaration. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five percent (75%) of the Owners of Lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Developer, if Developer is the owner of any real property then subject to this Declaration. Any such amendment shall not become effective until the instrument evidencing such change has been filed or recorded in the Records. Every purchaser or grantee of any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that this Declaration may be amended as provided in this section.

(e) Notwithstanding the foregoing, for so long as Developer owns a Lot primarily for the purpose of sale, no amendment shall be made to the provisions of this Declaration which would take away or adversely alter any rights, powers or exemptions of Developer unless consented to in writing by said Developer.

Section 7. No Liability. Developer has, using best efforts and all due diligence, prepared this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Developer shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Developer shall have no such liability.

Section 8. Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and the singular the plural and vice versa.

Section 9. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

## **ARTICLE X DURATION AND PERPETUITIES**

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

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

## **ARTICLE XI**

## **INSURANCE AND CASUALTY LOSS**

Section 1. Association Insurance. The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain or cause to be obtained the following Insurance:

(a) for all Insurable improvements, whether or not located on common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts;

(b) a public liability policy covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents; and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one Million Dollars (\$1,000,000.00); and

(c) such other insurance necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Housing and Urban Development ("HUD"), the U.S. Department of Veterans Affairs ("VA"), other applicable laws or deemed necessary in the sole discretion of the Board of Directors.

## **ARTICLE XII ADDITIONAL PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. Additions to Existing Property. The Developer, its successors and assigns, shall have the right for a period of ten years from the date on which this Declaration is filed for record in the Office of the Clerk of the Superior Court of Bartow County, Georgia, to bring within the scheme of all or part of this Declaration, in addition to the property described in Exhibit "A", any other property then owned by the Developer which is contiguous to the property described in Exhibit "A". The property which may hereafter be brought within the scheme of all or part of this Declaration is hereinafter referred to as the "Additional Property".

Section 2. Optional and Not Mandatory. Although the Developer, its successors and assigns, are hereby provided with the right to submit the Additional Property or any portion or portions thereof to the scheme of all or part of this Declaration, this right is to be exercised at the option of the Developer, its successors or assigns, in their sole discretion and is not intended to impose any obligation upon the Developer, its successors or assigns, to submit the Additional Property or any portion or portions thereof to the Covenants and Restrictions of this Declaration.

Section 3. Procedure. Should the Developer, its successors or assigns, in their sole discretion, decide to submit the Additional Property or any portion or portions thereof to the Covenants and Restrictions of this Declaration, the same shall be done by filing for record in the Office of the Clerk of the Superior Court of Bartow County, Georgia, a Supplementary Declaration of Covenants, Conditions and restrictions signed only by the Developer, its successors or assigns, with respect to the Additional Property or portion thereof which shall extend the scheme of all of the Covenants and Restrictions of this Declaration to such property. For the purposes of Sections 1, 2 and 3 of Article X to be deemed a “successor or assign” of Developer so that additional property may be added under these Covenants and Restrictions, such successor or assign must have succeeded to the interest of Developer by one of the following methods: (a) by deed to all the undeveloped lots expressly including an assignment of Developer’s rights under Article X; (b) by foreclosure on the undeveloped lots; or (c) by Deed in Lieu of Foreclosure on the undeveloped lots.

**ARTICLE XIII  
GEORGIA PROPERTY OWNERS ASSOCIATION ACT**

This Declaration shall be governed by the Georgia Property Owners Association Act as set forth in O.C.G.A. Section 44-3-220.

IN WITNESS WHEREOF, the undersigned have executed these covenants on the day and year above written.

Signed, Sealed and Delivered in the presence of:

PUMPKIN VINE DEVELOPMENT, LLC

Witness

By: R. Brad Dilbeck  
Manager

Signed, Sealed and Delivered in the presence of:

Notary Public  
[Notary Seal]

\_\_\_\_\_  
By: G. Stephen Evans  
Manager