



Austin Lake
Homeowners' Association

Declaration of Covenants
Conditions and Restrictions

This Declaration is re-recorded to correct a typographical error in Section 5.01 Ownership of Recreation Area, inserting "95%" in line (5) of that section in place of "75% of all lots" which was the Declarant's original intention

Filed and Recorded April 8, 1992 10:21 AM; Book 6574 Pages 0244-0257

IN THE OFFICE OF THE CLERK OF SUPERIOR COURT

STATE OF GEORGIA

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COUNTY OF COBB

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**DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS**

AUSTIN LAKE SUBDIVISION

THIS DECLARATION made this 26th day of March, 1992, by AUSTIN LAKE DEVELOPMENT COMPANY, a joint venture composed of Austin Ventures, Inc., a Georgia corporation and Redden Ventures, Inc., a Georgia corporation (hereinafter referred to as "Declarant").

WITNESSETH;

WHEREAS, Declarant is the owner of certain land hereinafter described on which Declarant desires to create a residential community with single family detached homes;

WHEREAS, Declarant desires to provide for the efficient maintenance and administration of the residential community in order to preserve the value of the homes;

WHEREAS, Declarant desires to provide to each owner of a parcel of said land the full benefit of such parcel with restrictions and conditions on the free and undisturbed use thereof no greater than are necessary or desirable to provide the same benefits to owners of other parcels;

WHEREAS, to these ends and for the benefit of said land and each owner of any parcel thereof, Declarant desires to subject said land to the provisions of this Declaration;

NOW THEREFORE, Declarant hereby declares that the land hereinafter described is and shall be held, transferred, sold and conveyed subject to the covenants, conditions, limitations, restrictions, reservations, rights and privileges hereinafter set forth, each of which is, and all of which are, for the benefit of said land and each owner of any parcel thereof, and shall inure to the benefit of and pass with said land, and any parcel thereof, apply to and bind the successors in interest of any owner of said land, or any parcel thereof, and constitute covenants running with the land applicable to all of said land conveyed in the future.

ARTICLE ONE
DEFINITIONS

The following words when used in this Declaration shall have the following meanings.

Section 1.01 Property. "Property" shall mean and refer to the land described in Exhibit "A" and shall include Austin Lake Subdivision as a residential subdivision located thereon, along with Lots, Homes, and Recreation Area.

Section 1.02 Plat. "Plat" shall mean the subdivision plat dated October 23, 1991, entitled "Final Plat for Austin Lake-Unit I" prepared by Gaskins Surveying Co., recorded in Plat Book 136, page 87, in the Office of the Clerk of the Superior Court of Cobb County, Georgia, as the same may be

amended and modified from time to time in accordance with applicable laws and regulations of Cobb County, Georgia, and recorded in the Office of the Clerk of the Superior Court of Cobb County, Georgia.

Section 1.03 Lot. "Lot" shall mean and refer to any numbered part or parcel of the Property shown on the Plat.

Section 1.04 Home. "Home" shall mean and refer to any building situated upon a Lot intended for residential use and occupancy, and as the context may require or permit, shall include such Lot.

Section 1.05 Improvement. "Improvement" shall mean and refer to any structure or other improvement on a Lot which may affect the appearance of the Lot, including, without limitation, any Home, other building, garage, deck, fence, wall, patio, driveway, parking area, antenna, or mail box; any utility facility (including, without limitation, utility facilities for water, electricity, gas, telephone, cable television, sanitary sewer, storm sewer or other public conveniences); any excavation, fill ditch, diversion, dam, berm or any thing or device on a Lot that alters the natural flow of any water in any natural or artificial drainage channel from, or upon, any other property; any slope or embankment bordering on any public or private roadway adjacent to a Lot; and any landscape plantings, improvements or structures (including, without limitation, grass, trees, bushes, shrubs, flowers, walls, fences, walkways, trails, electrical lighting devices, sculptures, decorative structures, directional and identity signage and irrigation facilities).

Section 1.06 Recreation Area. "Recreation Area" shall mean the portion of the Property designated on the Plat as recreation or common area, the entry improvements and roadway.

Section 1.07 Owners. "Owners" shall mean and refer to all record owners, whether composed of one or more persons or entities, of the fee simple title to any Lot, and the heirs, legal representatives, successors and assigns of any Owner, but, notwithstanding any applicable title theory concerning mortgages, deeds of trust or deeds to secure debt, shall not mean or refer to the holder of a mortgage, deed of trust or deed to secure debt unless and until such holder has acquired title pursuant to a foreclosure or any proceeding in lieu of foreclosure.

Section 1.08 Declarant. "Declarant" shall mean Austin Lake Development Company, a joint venture composed of Austin Ventures, Inc., a Georgia corporation, and Redden Ventures, Inc., a Georgia corporation, acting together, and their successors and assigns, and any other persons which may assume the obligations and liabilities of Declarant, or be vested with rights of Declarant, under this Declaration.

Section 1.09 Association. "Association" shall mean Austin Lake Homeowners' Association, a Georgia not-for-profit corporation formed to enforce the provisions of this Declaration.

ARTICLE TWO

PURPOSE OF DECLARATION

Section 2.01 Purpose. The Property is subjected to the covenants, conditions, limitations, restrictions, reservations, easements, liens, charges, rights and privileges hereby declared to insure the use of the Property as a high-quality, low-density residential development; to protect the Owners against such improper use of the Homes as will depreciate the value of their homes; to preserve, so far as practicable, the natural beauty of the Property; and, in general, to provide adequately for the continuation of a high-quality development on the Property, and thereby to enhance the value of the Homes.

Section 2.02 Covenants Running with the Land. The covenants and restrictions contained herein constitute covenants running with the land applicable to the Property and shall burden and benefit and pass with any conveyance of the Property for the duration thereof. Such covenants and restrictions shall be deemed incorporated in all deeds and conveyances hereafter made by the Declarant whether or not incorporated or referred to therein, and every person acquiring or holding any interest in the Property

or any parcel thereof, shall take or hold such interest with notice of these covenants and restrictions and all provisions hereof. Such person, by accepting such entry, shall be deemed to have assented to these covenants and restrictions and all provisions hereof.

ARTICLE THREE **PLAN APPROVAL**

Section 3.01 Approval Required. No improvement of any nature whatsoever shall be constructed, installed, altered (to the extent that such alteration materially changes the exterior appearance of any existing and previously approved Improvements), added to, or maintained upon any part of the Property unless the plans and specifications therefore have been approved by the Declarant in accordance with this Article. Declarant shall have the sole discretion to determine whether plans and specifications submitted for its approval are acceptable, and the Declarant shall be entitled and empowered to enjoin or remove any construction undertaken pursuant to plans and specifications that have not been expressly approved in writing by the Declarant, if such approval is required under this Article.

Section 3.02 Plan Review. Prior to the commencement of any construction of Improvements, an Owner shall submit to the Declarant the plans and specifications for the proposed Improvements, including, without limitation, any one or more of site development plan, architectural drawings, site utility plan, grading and drainage plan and landscaping plan. Declarant will take action on the submitted plans and specifications within thirty (30) calendar days of receipt thereof.

Section 3.03 Plan Approval. Declarant shall act promptly as set forth herein to review plans and specifications and shall have broad discretion to approve or disapprove plans and specifications submitted for approval. If Declarant rejects any plans and specifications submitted, Declarant shall provide reasons for rejection, shall suggest revisions that meet Declarant's requirements, and shall otherwise make reasonable efforts to aid an Owner in preparing plans and specifications that will be acceptable to the Declarant. Any subsequent resubmission of rejected plans and specifications shall be reviewed and acted upon by Declarant within fifteen (15) calendar days after such resubmission. Without limiting the generality of Declarant's discretion to approve or disapprove plans and specifications, Declarant may disapprove any plans and specifications submitted for failure of an Owner to comply with any design or development standard established and published by Declarant; failure of an Owner to include in the plans and specifications such information as may have been reasonably requested by Declarant; objection by Declarant to the exterior design, color scheme, finish, proportions, style of architecture, height, appearance or proposed Improvement with existing improvements in the subdivision; objection by Declarant to the location of any proposed Improvements upon a Lot or with reference to Improvements on other Lots in the subdivision; objection by the Declarant to the grading plan for a Lot; or failure of the plans and specifications or an Owner to comply with any applicable zoning, building, land use, or other laws, ordinances, rules or regulations affecting development of the Property.

Section 3.04 Failure of Declarant to Act. If Declarant fails to approve or disapprove any plans and specifications submitted to it in accordance with this Article within thirty (30) calendar days of such submission, such plans and specifications shall be deemed to have been approved as submitted and no further action by an Owner or Declarant with respect thereto shall be required hereunder.

Section 3.05 Inspection. Following approval of any plans and specifications by Declarant, Declarant shall have the right during reasonable hours to enter upon a Lot and inspect the Improvements then under construction to determine whether or not the plans and specifications therefor have been approved by Declarant. If Declarant shall determine that such plans and specifications have not been approved or that plans and specifications which have been approved are not being complied with, then Declarant may in its discretion give an Owner written notice to such effect, and, within three (3) days after this written notice, Declarant shall be entitled to enjoin further construction and to require the

removal or correction of any work in place that does not comply with approved plans and specifications. If any Improvement shall be altered or replaced or maintained on the Property otherwise than in substantial conformity with the approved plans and specifications therefor, such action shall be deemed to have been undertaken without requisite approval of Declarant and to be in violation of these covenants and restrictions and Declarant shall be entitled to take action as permitted hereunder.

Section 3.06 Architectural Control Committee. At such time as all Lots have been sold or conveyed to permanent purchasers other than Declarant and all initial Improvements thereon have been completed, the Association may elect an Architectural Control Committee consisting of not more than three (3) members, which shall thereafter have all rights, powers and privileges granted to Declarant under this Article.

ARTICLE FOUR COVENANTS RESPECTING PROHIBITIVE STRUCTURES, USES AND ACTIVITIES

Section 4.01 Homes. All Homes shall be single family detached dwelling units not to exceed two and one-half stories.

Section 4.02 Lots. Lots shall not be subdivided or otherwise divided or apportioned.

Section 4.03 Residential Use. The Property shall be used only for single family residential purposes and no incidental business or commercial activity shall be conducted in or upon the Property, upon any Lot or in any Homes.

Section 4.04 Nuisances. No noxious or offensive condition or activity shall be allowed to exist or operated upon the Property or upon any Lot, or in any Home, and nothing shall be done thereon or therein which may be or may become an annoyance or nuisance to the Owners.

Section 4.05 Antenna. No exterior antennas, reception discs or similar devices of any type which are visible from the road or street serving the Lot shall be installed on a Home or Lot.

Section 4.06 Waste Materials. Trash, garbage, debris and other waste materials shall be kept in secure and sanitary containers which are maintained in a safe, clean and sanitary condition and shall be located in a screened or enclosed area approved as part of the original construction of a Home.

Section 4.07 Mailboxes. No mailbox or paper box or other receptacle of any kind for the use and delivery of mail, newspapers or similar material shall be erected or located on any Lot except mailboxes installed as part of the original construction of the Homes, or replacements thereof.

Section 4.08 Parking. Automobiles shall be parked on Lots only in areas specifically designed therefor. Commercial vehicles, trailers, trucks, campers, motor homes and boats or other water craft shall be parked or stored in enclosed or naturally screened areas on Lots.

Further, it is hereby acknowledged and agreed that certain Lots within the Property may not be suitable to accommodate such recreational vehicles at all. While nothing contained herein shall prohibit the use of portable or temporary buildings or trailers as field offices by contractors during actual construction, the use, appearance and maintenance of such a building or trailer must be specifically approved by the Declarant prior to its being moved onto the construction site.

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 shall repair or restore any vehicle of any kind upon any Lot, except for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

Section 4.09 Clotheslines. No clotheslines shall be erected or maintained, and no clothing, towels, linens or other items shall be hung or draped, on a Lot or Home.

Section 4.10 Garages. There shall be no front entry carports. All front entry garages must have doors.

Section 4.11 Fences. There shall be no metal fences in or along Lot boundaries adjacent to the road or street serving the Lot.

Section 4.12 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Declarant of plans and specifications for the prevention and control of such erosion or siltation. Declarant may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 4.13.

Section 4.13 Landscaping. No construction or alteration of any Improvement shall take place without the prior written approval by the Declarant of plans and specifications for the landscaping to accompany such construction or alteration.

Section 4.14 Temporary Building. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot. No contractor or builder shall erect on any Lot any temporary building or shed for use in connection with construction on such Lot without the prior written consent of the Declarant.

Section 4.15 Signs.

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

- (i) such signs as may be required by legal proceedings;
- (ii) a sign indicating the builder of the residence on the Lot;
- (iii) no more than one (1) "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; and
- (iv) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the Declarant.

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

Section 4.16 Setbacks. In approving plans and specifications for any proposed Improvement, the Declarant may establish setback requirements for the location of such Improvement which are more restrictive than those established by the Plat. No Improvement shall be erected or placed on any Lot unless its location is consistent with such setbacks.

Section 4.17 Recreational Equipment. No recreational equipment and playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot.

Section 4.18 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. No animal shall be allowed to become a nuisance. No Improvement for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Improvement have first been approved by the Declarant.

Section 4.19 Trees and Shrubs. No trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level, no flowering trees or shrubs, nor any evergreens on any Lot may be removed without the prior approval of the Declarant unless located within ten (10) feet of the approved site for a dwelling or within the right-of-way of driveways or walkways. Excepted herefrom shall be damaged or dead trees and trees which must be removed due to an emergency.

Section 4.20 Redecorating. Any and all proposed exterior redecoration of any dwelling or accessory structure must be first approved in writing by the Declarant as to the plans and specifications therefor before commencing any such exterior redecoration.

ARTICLE FIVE **RECREATION AREA AND YARD MAINTENANCE**

Section 5.01 Ownership of Recreation Area. The Association shall own the Recreation Area at such time as the Declarant deeds the Recreation Area to the Association, free and clear of any debt or other liens, which in any event shall be no later than the date on which 95% of all Lots have been sold.

Section 5.02 Use of Recreation Area. The Recreation Area shall be used as green space for the beautification of the property and for recreational purposes, subject to the right of the Association to provide for alternative or additional uses and to impose reasonable rules and regulations with respect to the Recreation Area.

Section 5.03 Maintenance of the Recreation Area. The Recreation Area shall be maintained by the Association which may select a Maintenance Committee of not more than three (3) members to supervise and coordinate the routine maintenance and repair of the Recreation Area, which shall at all times be maintained in a neat, orderly, and attractive condition.

Section 5.04 Recreation Area Insurance. The Association shall obtain and maintain in full force and effect public liability insurance covering the Recreation Area and all damage or injury caused by the Owners, their families, members, guests, agents and invitees on or about the Recreation Area. Such liability insurance shall have at least \$500,000.00 of coverage with respect to the injury or death of any one person, \$1,000,000.00 with respect to any one occurrence of bodily injury or death, and \$50,000.00 with respect to property damage or such other minimums as may be determined from time to time by the Association. Each Owner shall indemnify and hold the other Owners and Declarant harmless from and against all claims, suits, judgements, losses, and costs and expenses resulting from or arising in conjunction with the activities of such Owner and its family members, guests, agents, and invitees on or about the Recreation Area.

Section 5.05 Yard Maintenance. The Association shall also be responsible for and pay for yard maintenance on all Lots numbered 23-43, including mowing, fertilizing and edging of all grassed areas, for which an additional fee shall be charged to Owners of Lots numbered 23-43, by the Association. This yard maintenance fee shall be charged only to the Owners of Lots 23-43, and shall be in addition to, not in lieu of, the maintenance fee to be assessed by the Association for the care and upkeep of the Recreation Area. Maintenance of planting beds, trees and shrubbery shall remain the responsibility of the Owners as to their respective Lots. For the remaining Lots, yard maintenance shall be exclusive responsibility of the Owners as to their respective Lots.

ARTICLE SIX
CONTRIBUTIONS

Section 6.01 Lien and Personal Obligation. Each Owner of any Lot, by acceptance of a deed therefor whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay contributions to the Association for the cost and expense of maintaining and repairing the Recreation Area, such contributions to be fixed, established and collected from time to time as hereinafter provided. Such contributions, together with interest thereon and the costs of collection, shall be a charge on and a continuing lien upon, each Owner's Lot, as well as the personal obligation of the Owner of the Lot at the time the contribution became due and payable.

Section 6.02 Purpose of Contributions. The contributions shall be used by the Association exclusively for the purpose of promoting the health, safety, welfare and enjoyment of the Owners and operating, maintaining and repairing the Recreation Area, and paying the expenses directly related thereto, including the cost of public liability insurance.

Section 6.03 Annual Contributions. Each Owner of a Lot shall be assessed Four Hundred Fifty and No/100ths Dollars (\$450.00) annually on January 1, of each year until December 31, 1993, or the date when the Declarant transfers the Recreation Area to the Association, due and payable as to each Lot when the Lot is conveyed by warrantee deed to the Owner. The Owner of each Lot shall pay a pro-rata share of the assessment determined by dividing the total number of days remaining in the calendar year on the date of closing by 365 and multiplying the quotient by \$450.00.

Assessments shall be paid directly to the Declarant until such time as the Declarant has relinquished control of the Recreation Area to the Association.

The Association (or Maintenance Committee if one is elected by the Association) shall prepare annually a budget setting forth by category the estimated operating costs and expenses to be incurred for the Recreation Area for the following year, including the establishment and maintenance of such reserves as the Association or Maintenance Committee considers appropriate.

Section 6.04 Special Contribution. The Association may levy for any calendar year a special contribution, applicable to that year only, for the purpose of paying the actual costs and expenses for operating, maintaining and repairing the Recreational Area to the extent the estimated annual contributions and available reserves are insufficient. Notice of the Special contribution shall be delivered to each Owner by the Association.

Section 6.05 Amount of Contribution. Except as set forth hereinabove, all annual and special contributions shall be assessed equally among the Owners so that each Owner of a Lot shall pay a portion of such annual or special contribution equal to that of each other Owner of a Lot.

Section 6.06 Payment of Contribution. The annual and special contributions for each Lot provided for in this Article shall commence on the date on which such Lot is conveyed by Declarant by warrantee deed to the Owner, provided that the contributions payable with respect to any unimproved Lot no longer owned by Declarant may be reduced as deemed appropriate by the Association. Any special contribution shall be paid within sixty (60) days after notice of such contribution has been delivered to the Owners by the Association.

Section 6.07 Nonpayment of Contribution. If any contribution is not paid on the date when due, then such contribution shall become delinquent and shall, together with interest and the costs of collection as hereinafter provided, thereupon become a continuing lien on the Lot of the delinquent Owner;

provided, however, the personal obligation of the then Owner to pay such assessment shall remain his personal objection and shall not pass to his successor in title unless expressly assumed by them. The assessment shall bear interest from the date ten (10) days after the due date until paid at the legal rate of interest charged on judgements under Georgia law, and the Owner shall pay all costs of collection, including, without limitation, court costs and reasonable attorneys' fees.

Section 6.08 Certificates. Upon request, the Association shall furnish to any Owner upon request a certificate in writing setting forth the status of contributions due from such Owner and such certificate shall be conclusive evidence of payment of any contribution.

Section 6.09 Subordination of Liens. The lien of the contributions provided for herein shall be subordinate to the lien of any bona fide, first priority mortgage, deed of trust or deed to secure debt now or thereafter placed upon a Lot; provided, however, that such subordination shall apply only to a sale or transfer of a Lot pursuant to a foreclosure, or any proceeding in lieu of foreclosure, and such sale or transfer shall not relieve the Lot from liability for any contributions thereafter becoming due, nor from the lien of any such subsequent contribution.

ARTICLE SEVEN

ACTION BY THE ASSOCIATION

Section 7.01 Meeting of the Association. Except as otherwise provide in this Article, any action required or permitted hereunder to be taken by the Association or by all Owners shall be binding on each and every Owner of a Lot if approved by a majority vote of Owners in attendance at a meeting called by the Association to consider such action. Each Owner shall be given fifteen (15) days prior written notice of a meeting to consider such action. The notice shall state the nature of the action to be considered and establish a reasonable time, date and place for the meeting. Attendance at a meeting shall constitute a waiver of notice of such meeting and of all objections to the place or time of the meeting, or the manner in which it has been called, except when an Owner attends a meeting solely for the purpose of stating, at the beginning of the meeting, any such objection. Notice need not be given to any Owner who signs a waiver of notice either before or after the meeting.

Section 7.02 Voting by Owners. At any meeting of the Association called to consider any action to be taken, each Lot shall be allocated, and the Owner thereof shall be entitled to cast, one (1) vote, and (until such time as Declarant has sold or conveyed all of the Lots) Declarant shall be entitled to cast one (1) additional vote for each Lot owned by Declarant (so that Declarant casts two votes for each Lot owned). Any Owner may elect to vote without attending a meeting by either signing a written proxy designating a particular individual to cast the Owner's vote on any issue coming before the meeting, or by filing a written statement prior to the meeting specifying the issue on which the Owner intends to vote and stating how the Owner votes with regard to the issue. If a Lot has more than one (1) Owner, the vote allocated such Lot shall be cast in such a manner as the Owners of such Lot shall agree, and if at any meeting any one of such Owners shall cast the vote allocated to such Lot without objection by any other of the Owners of such Lot, such Owners shall be deemed to have agreed to cast such vote in the manner cast by the Owner casting such vote at the meeting.

Section 7.03 Consent to Action. In lieu of voting at a meeting, the Owners may acquiesce in or consent to any action requiring the agreement, consent or concurrence of a majority of Owners if each Owner executes a document waiving voting at meeting and specifying the action taken.

Section 7.04 Rules and Regulations. The Association may establish, abolish or amend reasonable rules and regulations concerning the use and maintenance of the Recreation Area and the Lots. The text of such rules and regulations and amendments thereto shall be furnished to each Owner prior to the effective date thereof. Such rules and regulations shall be binding upon each Owner until and unless such rules or regulations are specifically overruled, canceled or modified by the Association. The

Association shall have the power, upon violation of any such rules and regulations, to impose reasonable monetary fines which shall constitute a lien upon the Lot of the Owner guilty of such violation.

ARTICLE EIGHT
ENFORCEMENT OF COVENANTS

Section 8.01 Enforcement Rights. In the event any covenant, condition, limitation, restriction, reservation, right or privilege set forth in this Declaration is violated by any person, Declarant or the Association (once Declarant has conveyed to the Association its authority to enforce this Declaration) may execute and deliver to the person violating the same a notice specifying the violation and the action required to cure the violation, and if the violation is not cured within thirty (30) days after giving such notice, or significant action to cure has not been undertaken and be continuing in good faith within thirty (30) days after the giving of such notice, then Declarant or the Association, as the case may be, may, at its option and election, without further notice to such person, do any one or more of the following:

- (a) Exercise any right or remedy provided under this Declaration.
- (b) File suit at law or in equity either to restrain the violation, or to recover damages, or both.
- (c) Cure the violation by paying or causing to be paid when due and payable, any items which may be paid to cure a violation, or do or cause to be done such acts or things as may be required, necessary or desirable to cure the violation, in which case the sums paid, and the entire cost and expense of such acts or things, shall be reimbursed to the person making payment or incurring the cost and expenses, together with interest thereon at the highest legal rate chargeable and all costs of collection, including reasonable attorneys' fees.

Section 8.02 Failure to Enforce. The failure of Declarant or the Association to enforce any provision in this Declaration as above provided shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE NINE
DURATION OF COVENANTS

Section 9.01 Duration. The covenants conditions, limitations, restrictions, reservations, rights and privileges set forth in this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Declarant or the Association, as herein provided, for a period of twenty (20) years from the date on which this Declaration is filed for record in the Office of the Clerk of the Superior Court of Cobb County, Georgia.

ARTICLE TEN
MISCELLANEOUS PROVISIONS

Section 10.01 Notices. Any notice, demand, request, consent, approval or communication under this Declaration shall be in writing and shall be deemed duly given or made: (i) when deposited, postage prepaid in the United States mail, addressed to the last known address of the person or entity to whom mailed as shown by the records of the Declarant; or (ii) when delivered personally to such person or entity at such address.

Section 10.02 Easements. Easements are reserved to the undersigned, its successors and assigns for installation and maintenance of utilities, drainage facilities, storm sewers and sanitary sewers as

designated herein, or as may hereafter appear on any plat of records in which reference is made to these covenants.

Section 10.03 Headings. The use of headings, captions and numbers in this Declaration is solely for the convenience of identifying and indexing the various paragraphs and shall in no event be considered otherwise in construing or interpreting any provision in this Declaration.

Section 10.04 Exhibits. Each and every exhibit referred to or otherwise mentioned in the Declaration is attached to this Declaration and is and shall be construed to be made a part of this Declaration by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

Section 10.05 Defined Terms. Capitalized terms used in this Declaration shall have the meaning ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

Section 10.06 Pronouns. Wherever appropriate in this Declaration, personal pronouns shall be deemed to include the genders and the singular to include the plural.

Section 10.07 Severability. If any term, covenant, condition or provision of this Declaration, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Declaration or the application of such term, covenant, condition or provision to any other person or any other circumstances (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

Section 10.08 Time of Essence. Time is of the essence of this Declaration.

Section 10.09 Applicable Law. This Declaration shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

Section 10.10 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant:

(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. 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 Lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Declarant, if Declarant 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 affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed 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.

(e) Declarant does hereby reserve the right, in its sole discretion to expand this Declaration to include other real property by Declarant's submission of such real property to the rights, privileges and obligations contained herein. Such submission shall be evidenced by an amendment filed to this Declaration setting forth therein the real property to which this Declaration shall apply. Upon which submission, said real property shall be subject to and governed by this Declaration as if included herein ab initio.

IN WITNESS WHEREOF, Declarant has executed this Declaration under seal, the day and year first above written.

Signed, sealed and
delivered in the
presence of:

Unofficial Witness

Notary Public

Declarant:

AUSTIN LAKE DEVELOPMENT COMPANY,
a joint venture
By: Austin Ventures, Inc.,
a Georgia corporation

By: _____
Chester A. Austin
President

[CORPORATE SEAL]

By: Redden Ventures, Inc.

By: _____
Raymond Redden
President

[CORPORATE SEAL]

*This document and its signature page have been reproduced here for the purpose of legibility.
"Exhibit A" of this amendment, a legal description of the property, has not been reproduced here.
Signatures and Seals exist on the original documents recorded with the County of Cobb Superior Court.*

STATE OF GEORGIA
COUNTY OF COBB

Cross Reference: Deed Book 6574
Page 244; Deed Book 6685, Page 330,
Cobb County, Georgia

First Amendment and Re-Statement of
Declaration of Covenants, Conditions and Restrictions
for Austin Lake Subdivision

THIS AMENDMENT, made and entered into as of the 25th day of September, 1992, by AUSTIN LAKE DEVELOPMENT COMPANY, a joint venture composed of AUSTIN VENTURES, INC., a Georgia corporation and REDDEN VENTURES, INC., a Georgia corporation (hereinafter referred to as "Declarant")

WITNESSETH:

WHEREAS, Declarant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Austin Lake Subdivision dated March 26, 1992, filed April 8, 1992, in Deed Book 6574, Page 244 and re-recorded in Deed Book 6685, Page 330, Cobb County, Georgia records (hereinafter referred to as the "Declaration"); and

WHEREAS, the declaration provides a common development plan to provide for the efficient administration of the residential community in order to protect the value of the homes in that certain real property located in Land Lots 338, 382, 383, 17th District, 2nd Section, Cobb County, being more particularly described as the "Property" in the Declaration.

WHEREAS, the Declaration provides in Section 10.10 (e) thereof that the rights of this Declaration may be extended to other real property by Declarant's submission of additional real property to the rights, privileges and obligations contained in the Declaration; and

WHEREAS, Declarant is desirous of adding additional real property to this declaration which shall serve as the "Phase II" of the Austin Lake Subdivision;

NOW THEREFORE, Declarant hereby amends the Declaration under and pursuant to the authority set forth in the Declaration as follows:

1. Phase II Property. The real property located in Land Lots 383, 410, 411, 17th District, 2nd Section, Cobb County, Georgia, more particularly described in Exhibit "A" attached hereto (the "Phase II Property") is hereby subjected to the covenants, conditions, limitations, restrictions, reservations, easements, liens, charges, rights and privileges hereby declared to insure the use of the real property as a high quality, low-density residential development all as contained in the Declaration. Upon this submission, the Phase II Property shall be subject to and governed by the Declaration as if included herein ab initio.
2. Annual Contributions. In accordance with Section 6.03 of the Declaration, neither Declarant, Construction lenders, the joint venture partners nor any construction companies who take title to the Lots for construction purposes only, shall have any obligation to pay the Association's annual fees. Association fees shall only be instituted and paid to the Association at the closing of the permanent mortgage loan closings to the homeowner/permanent residents of the Property and the Phase II Property in accordance with Section 6.03.

3. Effect of this Amendment. Except as specifically modified by this Amendment, all the terms and conditions of the Declaration are hereby restated in their entirety as originally written and shall remain in full force and effect to bind the Property and the Phase II Property.

IN WITNESS WHEREOF, Declarant has caused this amendment to be duly executed and sealed as of the day and year first above written.

Signed, sealed and
delivered in the
presence of:

AUSTIN LAKE DEVELOPMENT COMPANY,
a joint venture
By: Austin Ventures, Inc.,
a Georgia corporation

Unofficial Witness

By: _____
Chester A. Austin
President

[CORPORATE SEAL]

Notary Public

By: Redden Ventures, Inc., a
Georgia corporation
By: _____
Raymond Redden
President

[CORPORATE SEAL]

*This document and its signature page have been reproduced here for the purpose of legibility.
"Exhibit A" of this amendment, a legal description of the property, has not been reproduced here.
Signatures and Seals exist on the original documents recorded with the County of Cobb Superior Court.*

Filed and Recorded November 3, 1993 4:31 PM; Book 7737 Pages 321-322

STATE OF GEORGIA

Cross Reference: Deed Book 6574
Page 244; Deed Book 6685, Page 330; Deed
Book 6872, Page 83
Cobb County, Georgia Records

COUNTY OF COBB

Second Amendment and Re-Statement of
Declaration of Covenants, Conditions and Restrictions
for Austin Lake Subdivision

THIS AMENDMENT, made and entered into as of the 27th day of October, 1993, by AUSTIN LAKE DEVELOPMENT COMPANY, a joint venture composed of AUSTIN VENTURES, INC., a Georgia corporation and REDDEN VENTURES, INC., a Georgia corporation (hereinafter referred to as "Declarant")

WITNESSETH:

WHEREAS, Declarant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Austin Lake Subdivision dated March 26, 1992, filed April 8, 1992, in Deed Book 6574, Page 244 and re-recorded in Deed Book 6685, Page 330, Cobb County, Georgia records (hereinafter referred to as the "Declaration"), which was amended by First Amendment and Re-Statement of Declaration of Covenants, Conditions and Restrictions for Austin Lake Subdivision, dated September 25, 1992, filed September 28, 1992, recorded in Deed Book 6872, Page 83, aforesaid records which, among other things extended this Declaration to additional real property known as "Phase II" of the Austin Lake Subdivision; and

WHEREAS, the Declaration provides that this Declaration may be amended unilaterally at any time and from time to time by Declarant; and

WHEREAS, Declarant is desirous of deleting the language in Section 5.05 of the Declaration regarding the Association being responsible for and paying for yard maintenance on all Lots numbered 23-43;

NOW THEREFORE, Declarant hereby amends the Declaration under and pursuant to the authority set forth in the Declaration as follows:

1. Section 5.05 Yard Maintenance. Section 5.05 of the Declaration regarding yard maintenance shall be deleted in its entirety, and in its place shall be inserted the following language regarding yard maintenance:

"Section 5.05 Yard Maintenance. Yard Maintenance shall be the exclusive responsibility of the Owners as to their respective Lots. Such yard maintenance shall include but not be limited to the maintenance of lawns, planting beds, trees and shrubbery."

2. Effect of this Amendment. Except as heretofore and specifically modified by this Amendment, all terms and conditions of the Declaration are hereby restated in their entirety as originally written and shall remain in full force and effect to bind the Property and the Phase II Property.

IN WITNESS WHEREOF, Declarant has caused this amendment to be duly executed and sealed as of the day and year first above written.

Declarant:

Signed, sealed and
delivered in the
presence of:

AUSTIN LAKE DEVELOPMENT COMPANY,
a joint venture
By: Austin Ventures, Inc.,
a Georgia corporation

Unofficial Witness

By: _____
Chester A. Austin
President

[CORPORATE SEAL]

Notary Public

By: Redden Ventures, Inc., a
Georgia corporation
By: _____
Raymond Redden
President

[CORPORATE SEAL]

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Signatures and Seals exist on the original documents recorded with the County of Cobb Superior Court.*

STATE OF GEORGIA

COUNTY OF COBB

Cross Reference:

Deed Book 7737, Page 321;

Deed Book 6685, Page 330;

Deed Book 6872, Page 83;

Cobb County, Georgia Records

Third Amendment and Restatement of
Declaration of Covenants, Conditions and Restrictions
for Austin Lake Subdivision

THIS AMENDMENT, is made and entered into as of the 22nd day of July, 1997, by AUSTIN LAKE DEVELOPMENT COMPANY, a joint venture composed of Austin Ventures, Inc., a Georgia corporation and Redden Ventures, Inc., a Georgia corporation (hereinafter referred to as "Declarant")

WITNESSETH:

WHEREAS, Declarant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Austin Lake Subdivision dated March 26, 1992, filed April 8, 1992, in Deed Book 6574, page 244 and re-recorded in Deed Book 6685, page 330, Cobb County, Georgia records (hereinafter referred to as the "Declaration"), which was amended by First Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Austin Lake Subdivision, dated September 25, 1992, filed September 28, 1992, recorded in Deed Book 6872, page 83, which was further amended by Second Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Austin Lake Subdivision, dated October 27, 1993, filed November 3, 1993, recorded in Deed Book 7737, page 321; and

WHEREAS, the Declaration provides that this Declaration may be amended unilaterally at any time and from time to time by Declarant; and

WHEREAS, the Declaration provides in Section 10.10(e) thereof that the rights of this Declaration may be extended to other real property by Declarant's submission of additional real property to the right, privileges, and obligations contained in the Declaration; and

WHEREAS, Declarant desires to add real property to this Declaration which shall serve as common area including the swimming pool and surrounding property, known as the "Landscape Area" and "Recreation Area";

WHEREAS, Declarant desires to add additional real property to this Declaration which shall serve as additional common area including the lake known as "Austin Lake";

NOW THEREFORE, Declarant hereby amends the Declaration pursuant to the authority set forth in the Declaration as follows:

1. Landscape and Recreation Area. The real property located in Land Lots 338 and 383, 17th District, 2nd Section, Cobb County, Georgia including the landscaped entrance way, common area and swimming pool of Austin Lake Subdivision, and as described in the plat survey of Austin Lake Subdivision by John Gaskins, filed in Superior Court of Cobb County on February 18, 1997, recorded in Plat Book 138, Page 12, which description is incorporated herein by this reference (the "Landscape and Recreation Area") is hereby deeded to the Association, free and clear of any debt or other liens and is hereby subjected to the covenants, conditions, limitations, restrictions, easements, liens, charges, rights and privileges hereby declared to insure the use of the real property as a high quality, low density, residential

development all as contained in the Declaration. Upon the submission, the Recreation Area shall be subject to and governed by the Declaration as if included herein ab initio.

2. Austin Lake. The real property located in Land Lots 410 and 411, 17th District, 2nd Section, Cobb County, Georgia including the lake commonly known as Austin Lake, and more particularly described in Exhibit "A" attached hereto ("Austin Lake") is hereby deeded to the Association, free and clear of any debt or other liens, and is hereby subjected to the covenants, conditions, limitations, restrictions, easements, liens, charges, rights and privileges hereby declared to insure the use of the real property as a high quality, low density, residential development all as contained in the Declaration. Upon the submission, Austin Lake shall be subject to and governed by the Declaration as if included herein ab initio.
3. Ownership of Austin Lake and the Landscape and Recreation Area. In accordance with Section 5.01 of the Declaration, the Association shall own Austin Lake and the Landscape and Recreation Area.
4. Use of Austin Lake and the Landscape and Recreation Area. In accordance with Section 5.02, Austin Lake and the Landscape and Recreation Area shall be used as green space for the beautification of the Property and for recreational purposes, subject to the right of the Association to provide for alternative or additional uses and to impose reasonable rules and regulations with respect to Austin Lake and the Landscape and Recreation Area, as provided for herein and to be determined in the future.
5. Maintenance of the Austin Lake and Landscape and Recreation Area. In accordance with Section 5.03, Austin Lake and the Landscape and Recreation Area shall be maintained by the Association, which may select a maintenance committee of not more than three (3) members to supervise and coordinate the routine maintenance and repair of Austin Lake and the Landscape and Recreation Area, which shall at all times be maintained in a neat, orderly, and attractive condition.
6. Insurance. In accordance with Section 5.04 of the Declaration, the Association shall obtain and maintain in full force and effect public liability insurance covering Austin Lake and the Landscape and Recreation Area and all damage or injury caused by the owners, their families, members, guest, agents and invitees on or about Austin Lake and the Landscape and Recreation Area. Such liability insurance shall have at least \$500,000.00 of coverage with respect to the injury or death of any one person, \$1,000,000.00 with respect to any one occurrence of bodily injury or death, and \$50,000.00 with respect to property damage or such other minimums as may be determined from time to time by the Association. Each Owner shall indemnify and hold the other owners and Declarant harmless from and against all claims, suits, judgments, losses, and costs and expenses resulting from or arising in connection with the activity of such Owner and its family members, guests, agents and invitees on or about Austin Lake and the Landscape and Recreation Area.
7. Austin Lake. This Section of the Declaration and rules, use restrictions, and design guidelines issued by the Association and the Architectural Control Committee shall govern the use of Austin Lake. The following provisions shall govern the use of Austin Lake:
 - (a) Owners are prohibited from withdrawing water from Austin Lake for irrigation of lawns and gardens on a Lot or for any other purpose.
 - (b) Retaining walls and similar structures shall not be installed without the prior written approval of the Architectural Control Committee.
 - (c) No ice skating or water skiing shall be permitted on Austin Lake.

- (d) Owners may fish in Austin Lake provided any such Owner has obtained such licenses as may be required by any governmental entity.
- (e) No docks shall be permitted on any portion of the common area except docks originally installed by Declarant or its designees.
- (f) Owners of Lots may construct docks on the Owner's Lot, provided the Owners request and obtain approval of Declarant and the Architectural Control Committee for the dock construction.
- (g) No boats with gasoline-powered motors or boats over ten (10) feet in length shall be permitted on Austin Lake. Sailboats and row boats are permitted.
- (h) Boats with motors may have only electric motors. Jet skis and all other gasoline-powered craft are prohibited.
- (i) No swimming shall be permitted in Austin Lake at any time.
- (j) Hours of Austin Lake use shall be from 10:00 a.m. until dark, or any other reasonable hours determined by the Association.
- (k) All children under the age of twelve (12) shall be supervised by an adult at or near Austin Lake.
- (l) No automobiles or motor vehicles of any type shall be driven on or parked at the dam.
- (m) No alcohol products shall be consumed at or near Austin Lake.
- (n) No boats shall be left or stored in Austin Lake, but shall be removed and stored on the Owner's Lot.

Declarant, the Association, the board, and the officers, directors, members, employees, and agents of any of them, shall not be held liable in any manner whatsoever for and hereby disclaims any and all such liability and responsibility for, any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of Austin Lake. Each Owner of a Lot, by acceptance of a deed therefor, on behalf of such Owner and such Owner's family members, guests, and invitees, hereby agrees not to bring any action or suit against Declarant, the Association, the board, or the officers, directors, members, employees, and agents of any of them, and hereby releases, remises, quitclaims, and covenants not to sue any or all of the foregoing, for any claims, demands, and causes of action arising out of or in connection with the authorized or unauthorized use of Austin Lake and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Notwithstanding anything contained in this Declaration to the contrary, the Association or the Architectural Control Committee, in enforcing the use restrictions contained in this Amendment and the Declaration or in promulgation, adopting, or enforcing rules and regulations, may apply a stricter standard to any Lot which adjoins, abuts or contains any part of Austin Lake if, in the discretion of the Association or Architectural Control Committee, such is necessary to uphold the appearance of the entire community, and especially Austin Lake.

8. Effect of this Amendment. Except as specifically modified by this Amendment, all the terms and conditions of the Declaration are hereby restated in their entirety as originally written and shall remain in full force and effect to bind the Property, Austin Lake and the Landscape and Recreation Area.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be duly executed and sealed as of the day and year first above written.

As to Austin Ventures, Inc.,
signed, sealed and
delivered in the
presence of:

Witness

Notary Public

As to Redden Ventures, Inc.,
signed sealed and delivered
in the presence of:

Witness

Notary Public

AUSTIN LAKE DEVELOPMENT COMPANY,
a joint venture

By: Austin Ventures, Inc.,
a Georgia corporation

By: _____
Chester A. Austin
President

[CORPORATE SEAL]

By: REDDEN VENTURES, INC., a
Georgia corporation

By: _____
Raymond Redden
President

[CORPORATE SEAL]

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