

DECLARATION OF PROTECTIVE COVENANTS
RESTRICTIONS AND CONDITIONS
ASHTON PARK SUBDIVISION
GREENWOOD, SOUTH CAROLINA
PHASE I

Filed this 28 day May 1999
and recorded in Vol. 574 Page 308
PAT DARRACH 3:30 PM
S.C.C.F. AND C.C.G.S. GREENWOOD COUNTY, S.C.
TM # 157-00-04-014

STATE OF SOUTH CAROLINA)
COUNTIES OF GREENWOOD)

THIS DECLARATION OF PROTECTIVE COVENANTS is made and published this 20th day of May, 1999, by EMERALD INVESTMENTS, INC. (hereafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described in this Declaration and desires to create thereon a limited planned community; and

WHEREAS, the Declarant desires to subject the real property described in this Declaration, together with such additions as may hereafter be made, as provided in these Declarations, to the covenants, restrictions, conditions, easements, affirmative obligations, charges and liens, hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of said property and each and every owner of any and all parts thereof;

NOW, THEREFORE, the Declarant declares that the real property described in this Declaration, and any such additions thereto as may be hereafter be made pursuant to this Declaration, is and shall be held, transferred, sold, conveyed, mortgaged, or otherwise encumbered, given, donated, leased, occupied, and used subject to all of the covenants, restrictions, conditions, easements, charges, liens, and affirmative obligations hereinafter set forth.

ARTICLE I
DEFINITIONS

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

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Section 2. "Supplementary Declaration" shall mean and refer to any declaration of protective covenants, restrictions, and conditions which may be recorded by the Declarant, which tends the provisions of this Declaration to one or more parcels or tracts of real property and which contains provisions for such tract or parcel of real property that are complementary to this Declaration.

Section 3. "Association" shall mean and refer to Ashton Park Homeowners Association, Inc., a South Carolina non-profit corporation.

Section 4. "Declarant" shall mean and refer to Emerald Investments, Inc., its Successors and/or Assigns.

Section 5. "Lot" shall mean and refer to any regularly subdivided lot of land shown upon any recorded subdivision map of the properties (as hereinafter defined) filed by the Declarant. The term "Lot" shall also include any re-subdivided lot permitted hereunder.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Property" shall mean and refer to the real property described in this Declaration and subject thereto, together with such other real property as may from time to time be added thereto and subjected to this Declaration or any Supplementary Declaration and may also refer to any parcel or tract included in subdivision of record - regardless of re-subdivision by Declarant.

Section 8. "Architectural Control Committee" or "Committee" shall mean and refer to that committee appointed by the Declarant and having the responsibilities described in Article V hereof.

Section 9. "Owner" shall mean and refer to the recorded owner, whether one or more persons or entities of any lot but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Common Area" shall mean all immovable property (including improvements thereto) owned by the Association for the common use and enjoyment of members of the Association owned by the Association at the time of the conveyance of the first lot.

Section 11. "High Density Area" shall mean and refer to any tract or parcel of land shown upon the recorded or future subdivision plat or plats of the Property, which is intended for use as a site or sites for condominium regimes or high density residential purposes.

Section 12. "Living Unit" shall mean and refer to any structure or portion of a structure situated upon the Property which is designed and intended for use and occupancy as a residence by a single family.

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Section 13. "Building" shall mean and refer to any Living Unit, garage, carport, or any other structure, including, but not limited to, playhouses, fences, walls, decks, swimming pools, and alterations, additions, and appurtenances to all of the foregoing.

**ARTICLE II
PROPERTY RIGHTS**

Section 1. *Owners Easements of Enjoyment.* Every Owner shall have a right and easement of enjoyment in and to common area which shall be appurtenant to and shall pass with title to every lot as set out hereinbelow, subject to the following provisions:

(A) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area;

(B) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed ninety (90) 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 dedication 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.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

Section 1. *Membership in the Homeowners Association.* Every owner of a lot is subject to assessment and the Declarant, its Successors and/or Assigns, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

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

Class A: Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each lot Owner. When more than one (1) person holds an interest in any lot, all such persons shall be members. The vote for

such lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any lot.

Class B: Class B members shall be Declarant, its Successors and/or Assigns, and shall be entitled to four (4) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the day of record of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on January 1, 2002.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENT OF CHARGES

Section 1. *Creation of Owner's Personal Obligation for Payment of Certain Charges and Assessments.* The Association is authorized to levy and collect charges and costs assessed by it against each lot and the Owner thereof as hereinafter provided. Each Owner, by acceptance of a deed or other conveyance, is deemed to covenant and agree to pay to the Association costs assessed to Owner of Lots as follows:

(A). Annual assessments or charges, and

Section 2. *Purpose of Assessments or Charges.* Revenues derived from assessments or charges levied by the Association shall be used exclusively for the recreation, health, safety, and welfare of its members, for improvement and maintenance of the Association's properties and for facilities related to the common benefit of all the members.

Section 3. *Annual Assessments.* That the initial annual assessment shall become due as of January 4, 1999 and the maximum annual assessment until January 1, 2001 shall be as follows:

(A) All lot owners not to exceed \$100.00 per lot

From and after the first day of January 1, 2001, the maximum annual assessment may be increased above the established rate by a vote of the members. Members who are delinquent in any amount owed the Association shall not be entitled to vote until such delinquency is paid in full. Increases shall have a maximum duration of two (2) years, after which period members may vote in the manner provided hereinafter to reinstate additional increases, provided that any such change shall have either one (1) the written assent of two-thirds (2/3) of the authorized votes of members in lieu of a normal meeting, or two (2) by majority vote of authorized members, voting in person or

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by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting.

After consideration of maintenance, costs and future needs of the Association, the Board of Directors of the Association may fix the annual assessment or charge.

Assessment shall be prorated and collected so that all come due and payable uniformly during the month of January of each year. Upon closing of a sale of a lot, the member shall pay his prorata portion of the remaining year's assessment to the Association. Assessments shall also be prorated as to a lot which was vacant for a portion of an assessment year.

Section 4. Uniform Rate of Assessment or Charge. Both regular and special assessments or charges must be fixed at a uniform rate for all lots within each group and shall be collected on an annual basis.

Section 5. Quorum for any Action Authorized Under Section 3. At the first meeting called, as provided in Section 4(b) hereof, the presence at the meeting of members (or their proxies) entitled to cast sixty (60%) percent of all the authorized votes of members of the Association (or, in a proper case, a group) shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to written notice of not less than fifteen (15) days before, and not more than thirty (30) days of the time and purpose of the meeting.

Section 6. Effect of Non-Payment of Assessments or Charges. Remedies of the Association. Any assessment or charge which is not paid when due shall be delinquent. If the assessment or charge is not paid within thirty (30) days after the date, the assessment or charge shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum until paid, and may be collected in any lawful manner. No Owner may waive or otherwise escape liability for the assessments or charges provided for herein by abandonment of his lot. The Homeowners Association may at its discretion and is hereby empowered to file a Lis Pendens in regard to any such claim or cause of action on the property affected by the same. That should any such legal proceeding at law or equity be necessary, the property Owner shall be liable for any applicable costs and reasonable attorney's fees associated therewith.

ARTICLE V ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. No building, fence, wall, deck, pool, or dock (for waterfront owners) or other structure shall be commenced, erected or maintained upon any lot, nor shall any exterior addition to or specifications, showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the

harmony of external design and location in relation to surrounding structures, topography by an Architectural Control Committee composed of three (3) representatives appointed by Declarant. Any subsequent material modification of the exterior of any existing structure shall be subject to approval of the ACC.

Said members of the Architectural Control Committee (ACC) shall serve until replaced or until new members are designated by Declarant. The initial address of the ACC is 2117 Highway 72 West, Greenwood, South Carolina 29649.

When Declarant no longer owns property within the Subdivision, the ACC shall then be composed of property Owners within the Subdivision who have been elected by a majority of the Owners.

Before any building may be constructed, erected, altered, or placed on any of the Property, the plans, specifications and location of the home shall be submitted by the Owner or Owner's agent to the Architectural Control Committee. The design of all homes must be in harmony and conformity with the general plan of the subdivision. All construction must be approved in writing from the Architectural Control Committee. All construction of a home must be completed within one (1) year from the first day of construction.

ARTICLE VI RESIDENTIAL USE

No Lot shall be used except for single-family, residential purposes. Only one Living Unit may be erected on any Lot, other than in those areas specifically designated on recorded or future plats of the Property as High Density Areas.

ARTICLE VII EASEMENTS

The Declarant reserves unto himself, his successors and assigns, perpetual, alienable and releasable easements and rights-of-way on, over and under the ground, as shown on the recorded subdivision plat or plats of the Property, including the areas shown thereon rights-of-way for streets and roadways to construct, erect, install, maintain and use electric and telephone poles, wires, cables, conduits, pipes, sanitary sewers, water mains, storm drains, and other suitable equipment for the use and conveyance of electricity, cable televisions, security cable equipment, telephone, gas, water, sewer, or other private or public conveniences or utilities. There also shall be a permanent easement, in favor of each Lot, for the purpose of providing connection of that Lot with the utility installation, storm drainage, and sanitary sewer facilities most convenient thereto. In addition, all Lots where

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natural drainage occurs, or where drainage pipes have been installed, are subject to a drainage easement sufficient to properly maintain drainage. The Declarant, in its discretion, and at its expense, may open, enlarge and maintain all natural drains for surface water whenever and wherever such action may appear to the Declarant to be desirable or necessary to enhance or maintain reasonable standards of health, safety and appearance. No Building shall be erected over any area reserved above, nor shall any Owner change or alter such reserved areas in any manner that would or could change the drainage plan for the Lot or the Property.

RESTRICTIVE COVENANTS

1. *Land Use and Building Type.* No lot shall be used except for single family residential purposes. No commercial activity is allowed. No building shall be erected, altered, placed or permitted to remain on any lot unless approved by the ACC. No dwelling shall exceed two and one-half (2 1/2) stories in height.

2. *Dwelling Size.* The minimum heated floor area for residences, excluding exterior storage (attached or detached), open porches, breezeways, garages and carports is Fifteen Hundred (1500) heated square feet for a one (1) level dwelling with a single garage and Seventeen Hundred (1700) heated Square feet for a two (2) level dwelling with a single garage as to Lot Nos. Forty-three (43) through Fifty-seven (57) of said subdivision and Seventeen Hundred (1700) heated square feet for a one (1) level dwelling with a single garage and Nineteen Hundred (1900) heated square feet for a two (2) level dwelling with a single garage as to Lot Nos. Ninety-two (92) through One Hundred (100) of said subdivision.

Declarant reserves the right to amend these sizes in the event that a group of lots or parcel is set apart for development in association with Section 3, Article IV.

3. *Building Location.*

A. Minimum setback lines as related to the front, side, and rear lot lines are established by the County as follows:

- (a) Front - forty (40) feet
- (b) Side - twenty (20) feet
- (c) Rear - fifty (50) feet

For the purpose of this covenant, eaves, steps, terraces, patios, swimming pools, walls, fences, and open porches shall not be considered part of a building; provided, however, that this shall not be construed to permit any portion of the building to encroach upon another lot. In case of conflict between the setback lines on the recorded plat and these covenants, the latter is to prevail. Upon application to the ACC and upon showing a hardship, i.e. unusual topography or other

warranting condition, it may grant a variance as to any required setback, not to exceed twenty (20%) percent of that required. No obstruction to visibility at street intersections shall be permitted.

B. Owners of contiguous lots may, subject to the ACC approval, disregard the side setback requirement along his common lot line, provided no established or proposed easement is affected thereby.

4. *Appurtenant Buildings.* No more than one (1) appurtenant detached building(s) shall be allowed on any lot. Any such building shall conform to the main residence in design and material. No such building shall be used at any time for human occupancy. Any appurtenant building shall be approved by the ACC.

5. *Grounds.* The Architectural Control Committee may require the retention of certain trees which do not interfere with construction in order to maintain the natural beauty of the area.

6. *Resubdivision of Lots.* No lot shall be resubdivided into additional lots (resubdivided lots); however, lots may be resubdivided so as to decrease the total number of lots. No building or structure shall be constructed or permitted on any tract consisting of less than the entirety of one (1) lot. Except that re-subdivision that may be done by Declarant.

7. *Landscaping.* The yards of all residences must be landscaped, within sixty (60) days of completion of construction, in a manner which is compatible with surrounding residences. That a design of the same shall be submitted to the ACC for approval.

8. *Nuisances.* No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon the properties, nor shall any nuisance or odor be permitted to exist or operate upon or arise from the properties, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other of the properties. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed on the properties. Any Owner responsible, either through himself or his family, tenants, guests, employees or agents, for the creation of any unsightly or unsanitary condition on any portion of the properties including the dumping of trash or other debris, and who shall fail to remedy such condition, shall be liable to the Association for the cost of correcting any such condition and such cost shall be added to and become a part of the assessments of such Owner which are next due and payable.

9. *Other Structures.* No trailer, detached basement, tent, shack, garage, barn or other outbuilding erected in accordance with these covenants in the Subdivision shall at any time be used as a residence, temporarily or otherwise, nor shall any structure of a temporary character be used as a residence.

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10. *Maintenance.* It is a part of the plan of development that all properties, together with improvements, be maintained in an attractive condition at all times.

If a maintenance deficiency is found to exist by the Association, either as to an Owner's lot or buildings, a written notice specifying such defects shall be mailed to the lot Owner by certified mail, return receipt requested. The notice shall give a reasonable time, not to exceed ninety (90) days, for the Owner to remedy the deficiency at the Owner's expense. Should the Owner refuse or fail to comply, the Association may employ and pay persons or firms to correct the deficiency, and the cost thereof shall be added to and become a part of the assessments of such Owner which are next due and payable. The Association is given the authority to enforce such maintenance. The Association shall have the same rights and remedies for the enforcement of the within section as heretofore set out in Article IV, Section 7.

11. *Pets, livestock and other Animals.* No animals, livestock, poultry, exotic cats and other animals of any kind shall be kept, bred, or housed on any lot, except that of companion pets such as dogs, domesticated cats, fish, birds and other small mammals. Pets must be on leash or carried when not within the boundaries of its Owner's lot.

12. *Parking/Vehicles.* Off street parking and all driveways must be asphalt or constructed with materials approved by the ACC. No inoperable vehicle or vehicle without current registration, no trailers, trucks weighing in excess of three-quarter (3/4) ton, buses, commercial vehicles of any kind will be permitted to be kept parked overnight on any street or any lot. Each Owner shall provide off-street parking space for not less than two (2) automobiles prior to the occupancy of any Living Unit constructed on lot.

Recreational vehicles such as motorhomes, boats and campers that are being stored, must be stored off the street as to not create a nuisance in the neighborhood. No vehicle of any size transporting explosive or other hazardous material will be allowed in subdivision.

14. *Signs.* No sign of any kind shall be displayed to the public view on any lot, except one (1) sign of not more than four (4) square feet, advertising a home for sale or lease, or signs used by a builder to advertise the property during the construction and sales period. No sign, other than those approved by Declarant shall be permitted.

15. *Antenna/Satellite Dish.* No satellite dish or antennas in excess of twenty-four (24") inches shall be permitted on any lot without prior written approval from the Architectural Control Committee (ACC). No radio or television antenna having power in excess of one-half (1/2) watt shall be permitted without written permission by the ACC.

16. *Easements.* Easements for the installation and maintenance of utilities and drainage, including use of equipment thereon, are reserved as set out herein and specified on applicable recorded plats.

17. *Mining Operations.* In no way will drilling, quarrying or mining operations of any kind be allowed on any of the lots.

18. *Garbage.* "Roll-Out" garbage racks or containers shall be the only permissible garbage bins and shall be visible on garbage collection day only.

19. *Clothes Lines.* No outdoor clothes lines may be erected where they are visible from street or adjoining properties.

20. *Construction of New Buildings.* Construction of new buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing buildings onto a lot and remodeling or converting same into a dwelling unit in this Subdivision.

21. *Term and Amendment.* These covenants are to run with the land and shall be binding to all persons claiming under them for a period of twenty-five (25) years from the date the covenants are recorded, unless during such period those persons or firms owning a majority of the lot or voting stock shall have signed and caused to be recorded in the conveyance recorded in Greenwood County and Abbeville County, South Carolina, an instrument changing these Covenants in whole or in part. If no such instrument has been recorded within the stated twenty-five (25) year period, these covenants shall be automatically extended for successive periods of ten (10) years each, unless same be changed by the Owners of a majority of the lots substantially affected by such changes in covenants has been recorded, agreeing to change covenants in whole or in part.

22. *Conformance to Zoning.* No lot, including any improvements thereon, may be used in a manner which is not in conformity with all zoning ordinances and rules of a governmental authority having jurisdiction.

23. *Enforcement.* This Declaration may be enforced by the Owner of any Lot or any portion of the Property, or the Declarant and such enforcement shall be by any proceeding at law or in equity against any person or persons or other entities violating or attempting to violate any covenant or restriction, either to restrain violation including, but not limited to, specific performance or injunctive relief or to recover damages. The failure by any Owner to enforce any covenant, restriction, or condition set forth in this Declaration shall in no event be deemed a waiver of a right to do so thereafter.

24. *Liability.* Emerald Investments, Inc. shall not in any way or manner be held liable or responsible for any violation of these restrictions by any person or entity other than itself.

25. *Severability.* Invalidation of any one of these covenants by judgment or Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

26. *Roads.* There shall be no driveways or connecting roads for ingress or egress

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from the within property to any highway or road other than those specifically laid out and paved in the within Subdivision.

27. *Neatness.* It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkempt conditions of Buildings or grounds which shall tend to substantially decrease the beauty of any specific Lot, or the Property or the neighborhood as a whole. In the event of the failure of an Owner to maintain his Lot as herein described, the Association shall give the Owner a thirty (30) day written notice to correct the same and in the event he does not, the Association shall attend to the same and charge the Owner a minimum of One Hundred and No/100ths (\$100.00) Dollars. The Association shall have the same rights and remedies for the enforcement of the within Section as heretofore set out in Article IV, Section 7.

The property herein restricted is described as follows:

All those certain pieces, parcels or lots of land lying, situate and being in the County of Greenwood, State of South Carolina being shown and designated as Lots 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 92, 93, 94, 95, 96, 97, 98, 99 and 100 on plat entitled "Ashton Park Subdivision, Phase I" prepared by Newby-Proctor & Associates, Land Surveyors, of date November 17, 1998, heretofore entered for record in the Office of the Clerk of Court for Greenwood County in Plat Book 109, at Page 136. Reference is made to the aforesaid plat for a more full and accurate description by metes, courses, distances and bounds.

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IN WITNESS WHEREOF, Emerald Investments, Inc., has caused these presents to execute in its name and as its corporate act and deed and has caused its Corporate Seal to be affixed hereto, this 20th day of May, 1999. ca

In the Presence of:

EMERALD INVESTMENTS, INC.

C. Michael G.

By: Harold L. ...
its: President

Donna Dennis

Attest: Harold L. ...
its: Secretary

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

PROBATE)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within-named Emerald Investments, Inc., sign, seal and as its act and deed, deliver the within written Declaration of Protective Covenants, Restrictions and Conditions of Ashton Park Subdivision and that (s)he with the other witness subscribed above, witnessed the execution thereof.

C. McLaughlin

SWORN to before me this 21st
day of May, 1998.

Paul S. Beckna (L.S.)
Notary Public for South Carolina

My Commission Expires: 2-28-2000.

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